



Transcript of **Jim Dahlby**

Friday, August 5, 2022

Lucasys Inc. v. Powerplan, Inc.

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Reference Number: 117898

12 The following deposition of JIM DAHLBY, was taken pursuant
13 to stipulations contained herein, the reading and signing of
14 the deposition reserved before Collette Jackson, Certified
15 Court Reporter in the State of Georgia, on August 5, 2022, at
16 Robbins Alloy Belinfante Littlefield, LLC, 500 14th Street, NW,
17 Atlanta, Georgia 30318 at 9:30 a.m.

1 A P P E A R A N C E S

2

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1 I N D E X

2 DEPONENT

3 JIM DAHLBY PAGE

4

5 CROSS-EXAMINATION BY JOSHUA A. MAYES, ESQ.....7-216

6 DIRECT EXAMINATION BY STEPHEN FAZIO, ESQ.....216-231

7 RECROSS-EXAMINATION BY JOSHUA A. MAYES, ESQ....231-238

8 DISCLOSURE239

9 CERTIFICATE240

10 ERRATA SHEET.....241

11

12 * * * * *

13 E X H I B I T S

14

15 EXHIBIT IDENTIFIED DESCRIPTION PAGE MARKED

16 P-188 DOCUMENT 15

17 P-189 EMAIL 19

18 P-190 EMAIL FROM JAMIE CARR 38

19 P-191 EMAIL 40

20 P-192 EMAIL 45

21 p-193 EMAIL 47

22 P-194 EMAIL FROM JOHN ERICKSON 48

23 P-195 EMAIL 52

24 P-196 LETTER 58

25 P-197 LETTER 64

1	P-198	EMAIL	68
2	P-199	DOCUMENT	73
3	P-200	DOCUMENT	73
4	P-201	EMAIL	76
5	P-202	PRINT OUT FROM THE	92
6		WAYBACK MACHINE OF	
7		POWERPLAN'S WEBSITE	
8	P-203	LETTER	94
9	P-204	EMAIL	95
10	P-205	EMAIL	97
11	P-206	DOCUMENT	98
12	P-207	DOCUMENT	100
13	P-208	IP PROTECTION LETTER	101
14	P-209	EMAIL	102
15	P-210	DOCUMENT	105
16	P-211	EMAIL	109
17	P-212	LETTER TO AEP	110
18	P-213	DOCUMENT	111
19	P-214	EXCERPT FROM PRIVILEGE	118
20		LOG	
21	P-215	INTERROGATORIES RESPONSE	119
22	P-216	DOCUMENT	119
23	P-217	DOCUMENT	119
24	P-218	EMAIL	120
25	P-219	DOCUMENT	120

1	P-220	DOCUMENT	129
2	P-221	EMAIL	148
3	P-222	DOCUMENT	152
4	P-223	DOCUMENT	161
5	P-224	EMAIL	166
6	P-225	EMAIL	177
7	P-226	AGREEMENT FROM RCC	181
8	P-227	EMAIL	186
9	P-228	DOCUMENT	189
10	P-229	DOCUMENT	194
11	P-230	EMAIL	198
12	P-231	EMAIL	199
13	P-232	EMAIL	232
14	P-233	EMAIL	234

15

16

17

18

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1 P R O C E E D I N G S

2 VIDEOGRAPHER: -- at 9:35 a.m. on August 5th, 2022.

3 This begins the videotaped deposition of Dahlby taken in
4 the matter of Lucasys, Incorporated versus PowerPlan,
5 Incorporated, Case No. 1:20-CV-2987-AT. This deposition
6 is being taken at Robbins Alloy Belinfante Littlefield in
7 Atlanta, Georgia, at the request of Robbins Alloy.

8 Counsel, will all parties present please state their names
9 and whom they represent?

10 MR. MAYES: Joshua Mayes representing Lucasys, and
11 also here is Jason Alloy representing Lucasys.

12 MR. FAZIO: Steve Fazio with Squire Patton Boggs US,
13 LLP, on behalf of PowerPlan.

14 COURT REPORTER: Mr. Dahlby, will you raise your
15 right hand?

16 THE WITNESS: (Witness complies.)

17 COURT REPORTER: Do you solemnly swear or affirm that
18 the testimony that you're about to give will be the truth,
19 the whole truth, and nothing but the truth? If so, say I
20 do.

21 THE WITNESS: I do.

22 Whereupon,

23 JIM DAHLBY

24 after being first duly sworn, testified as follows:

25 C R O S S - E X A M I N A T I O N

1 BY MR. MAYES:

2 Q. Good morning, Mr. Dahlby. Could you state your name
3 for the record?

4 A. Jim Dahlby.

5 Q. Mr. Dahlby, have you ever had your deposition taken
6 before?

7 A. Car accident over the phone only, so --

8 Q. Okay. How long ago was that?

9 A. Probably at least 15 years ago.

10 Q. Okay. I'm going to cover just the ground rules real
11 quick to remind you of the process. We -- as you can tell,
12 we've got a court reporter here but no judge. She is going to
13 be taking down a transcript of everything we say. So in
14 natural conversation, it can be -- you can see where I'm going
15 with a question and just jump in to give an answer. Please try
16 not to do that today. So that she can take everything down,
17 let me finish my question, take a little breath, and then give
18 an answer. Okay?

19 A. Okay.

20 Q. Thank you. And along those lines, we need oral
21 responses. You can't shake your head or say "uh-huh" and
22 "uh-uh" because that makes for a difficult transcript. Okay?

23 A. Okay.

24 Q. Please don't guess or speculate unless I ask you to
25 do that or you tell me that's what you're doing. Okay?

1 A. Okay.

2 Q. Otherwise, I'm just going to assume what you're
3 telling me as an answer is something you actually remember and
4 know from your firsthand experience. Okay?

5 A. Okay.

6 Q. Is there any reason you couldn't give accurate
7 answers today?

8 A. No.

9 Q. Are you on any drugs, alcohol, or medication that
10 would impair your ability to testify?

11 A. No.

12 Q. Do you have any health conditions that would impair
13 your ability to testify accurately?

14 A. No.

15 Q. What is your address?

16 A. Business address or home address?

17 Q. Both?

18 A. Business address is 300 Parkwood -- or Galleria
19 Drive, Suite 2100, Atlanta, Georgia 30339. And my home address
20 is 3291 Georgetown Bluff, Marietta, Georgia 30066.

21 Q. Do you have a work phone number?

22 A. (770)937-3002.

23 Q. When did you graduate high school?

24 A. 1997.

25 Q. And what did you do after high school?

1 A. I attended Georgia Tech.

2 Q. Did you get a degree?

3 A. I did.

4 Q. What was your degree in?

5 A. Industrial engineering.

6 Q. Do you have any further education after your
7 bachelor's degree?

8 A. I received an MBA. I graduated last year.

9 Q. Where was that from?

10 A. Northwestern University.

11 Q. Do you have any professional certifications or
12 licenses?

13 A. I do not.

14 Q. After you graduated Georgia Tech, what was your first
15 job?

16 A. PowerPlan.

17 Q. Have you worked at PowerPlan continuously since that
18 time?

19 A. I have.

20 Q. Was that in June 2001 when you started at PowerPlan?

21 A. That's correct.

22 Q. Okay. What was your first role at PowerPlan?

23 A. I was a consultant.

24 Q. Describe for me what your day-to-day activities were
25 in that job as a consultant.

1 A. So I was assigned at customer project -- or on
2 multiple customer projects, and I would assist the customer
3 with implementing the PowerPlan software. So that would
4 involve working with them on their data, their business
5 requirements, and then how -- how to best configure or set up
6 and implement PowerPlan software.

7 Q. Did you ever work with Vadim Lantukh when you were at
8 PowerPlan?

9 A. We did not directly work together, but we were
10 engaged in conversations from time to time.

11 Q. Do you know what his role was when he was there?

12 A. He was a tax consultant.

13 Q. Did you do work similar to the work Mr. Lantukh did
14 in your role as a consultant for PowerPlan?

15 A. I did.

16 Q. Okay. How did your responsibilities or roles evolve
17 over time at PowerPlan?

18 A. So at -- over time I became responsible for some
19 product areas of the product, and then I moved into an industry
20 role within our sales organization, and then sales leader,
21 customer success leader, then a strategy -- growth strategy
22 role, and then most recently I'm now the SVP of customer
23 support and success.

24 Q. Let's talk about the job you had immediately before
25 this when you were Vice President of Growth Strategy. What did

1 you do when you were Vice President of Growth Strategy?

2 A. So I was engaged in three teams on implementation
3 strategy, industry strategy, and alliances.

4 Q. And what were your day-to-day tasks? What kind of
5 day-to-day tasks would you do in that role?

6 A. They varied from engaging with customers on a
7 particular implementation question or working with our industry
8 team on maybe an industry conference, or we have an alliances
9 group that would work with third parties (unintelligible).

10 Q. Were you responsible for identifying competitive
11 threats in that role?

12 A. I was not.

13 Q. Was someone else responsible for that?

14 A. I don't believe anyone had a direct responsibility
15 for that individually.

16 Q. Okay. What is your role now?

17 A. So I lead the customer success, customer support,
18 (unintelligible) services, and services operations teams.

19 Q. So what does your day-to-day job consist of now and
20 how did it change from your last role as, you know, Vice
21 President of Growth Strategy?

22 A. I mean, so the teams provide different aspects for
23 the business, so -- but typically we'll have the leaders of my
24 teams and the individuals on the teams. It may involve working
25 with customers. It may involve, you know, working with our

1 executive team on various activities across the business and
2 how our team interacts -- or my four teams interact with other
3 teams inside the business.

4 Q. Is one of your teams the services team -- the
5 professional services team?

6 A. It is not.

7 Q. Okay. Have you ever had responsibility for leading
8 the customer services team?

9 A. Well, so clarify.

10 Q. Sorry. The professional services team? Yeah, I
11 misspoke. Thank you.

12 A. So I was -- prior to 2010, I would have had a
13 leadership role in professional services, but I haven't had a
14 professional services leadership role since then.

15 Q. Okay.

16 A. We didn't call it professional services at the time,
17 but --

18 Q. What did you call it at the time?

19 A. Consultants.

20 Q. Okay. Do you know Brett Burts (ph)?

21 A. I do.

22 Q. Do you know why he left PowerPlan?

23 A. I do not.

24 Q. Do you know what he is doing now?

25 A. I do not.

1 Q. Have you kept in touch with him since he left
2 PowerPlan?

3 A. We spoke once briefly. He asked for -- if I knew a
4 particular person he was looking to get an introduction to, and
5 I did not, so --

6 Q. Okay. Do you know Jamie Carr (ph)?

7 A. I do.

8 Q. [REDACTED]

9 A. [REDACTED]

10 Q. [REDACTED]

11 A. [REDACTED] [REDACTED] [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 Q. Have you had kept in contact with him since he left
15 PowerPlan?

16 A. The last contact I had, I was assisting him in
17 getting his last expense report paid through our accounts
18 payable process, but I have not spoken to him since then.

19 Q. Okay. Do you know Drea Terete (ph)?

20 A. I do.

21 Q. Do you know why she left PowerPlan?

22 A. I do not.

23 Q. Have you kept in touch with her since she left
24 PowerPlan?

25 A. I have not.

1 Q. Do you know Jim Duffy (ph)?

2 A. I do.

3 Q. Do you know why he left PowerPlan?

4 A. I do not.

5 Q. Have you kept in touch with him since he left
6 PowerPlan?

7 A. We've exchanged a couple of text messages.

8 Q. Have you had any discussions with him since he left
9 PowerPlan about Lucasys?

10 A. I have not.

11 Q. How about about this case?

12 A. I have not.

13 Q. Do you know what Drea Terete is doing now?

14 A. I believe she is leading marketing for a company out
15 of Alabama. I don't know the company's name.

16 Q. Okay.

17 A. Or I don't remember it.

18 Q. Do you know Yost Routon (ph)?

19 A. I do.

20 Q. Do you know why he left PowerPlan?

21 A. I do not.

22 Q. Do you know what he is doing now?

23 A. He is leading finance for a software company in
24 Alpharetta.

25 Q. Have you kept in touch with him since he left

1 PowerPlan?

2 A. A couple of just casual text messages.

3 Q. Do any of those relate to this case?

4 A. No, nothing related to the case.

5 Q. How about to Lucasys?

6 A. No.

7 Q. Are you aware of anyone else who was in executive
8 leadership at PowerPlan other than the people I just named who
9 have left in recent years?

10 A. No.

11 (Plaintiff's Exhibit No. 188 was marked and identified.)

12 BY MR. MAYES: (Resuming)

13 Q. Okay. Mr. Dahlby, I'm handing you Exhibit 188. Take
14 a look at that and tell me if you've seen that before.

15 A. I have not.

16 Q. Okay. Do you know -- understand that you're
17 appearing here to testify pursuant to a notice of deposition
18 and that you were requested to appear to testify by Lucasys?

19 A. Yes. That was communicated by our legal counsel.

20 Q. Okay. Tell me what you did to prepare for today's
21 deposition.

22 A. Steve and I met yesterday and he showed me a handful
23 of documents. He kind of explained kind of what the process
24 was going to be like.

25 MR. FAZIO: Don't get into any of our communications.

1 MR. MAYES: Yeah, I was going to say the same.

2 MR. FAZIO: He's not asking you about any

3 communications we've had.

4 BY MR. MAYES: (Resuming)

5 Q. So aside from your discussions with Mr. Fazio or any
6 other legal counsel for PowerPlan, have you discussed your
7 deposition with anyone else?

8 A. No.

9 Q. Have you read any deposition transcripts from this
10 case?

11 A. I reviewed Mr. Burts' deposition just briefly to
12 understand kind of the types of questions and flow of the
13 conversation. I didn't study or read the document.

14 Q. Okay. Any others?

15 A. That's it.

16 Q. Are you aware that Lucasys sent requests for the
17 production of documents to PowerPlan in this case?

18 A. I'm aware, yes.

19 Q. Were you involved in any way in the effort to collect
20 documents responsive to those?

21 A. I believe that was requested on if I had a particular
22 pricing file, which I did not, so --

23 Q. Okay. And I guess you weren't -- you weren't one of
24 the people at PowerPlan who was tasked with, hey, go find where
25 these documents are located?

1 A. I was not.

2 Q. Okay. Are you familiar with a company called
3 Accufile?

4 A. I believe that was a product, but I'm not sure if
5 that was the company. I believe --

6 Q. Okay. Were you familiar with the Accufile product?

7 A. Not -- I mean, I knew it existed, but I was not
8 familiar with the product itself.

9 Q. Okay. In your role as a consultant, did you ever
10 convert PowerPlan customers from Accufile to PowerPlan?

11 A. I did not.

12 Q. Okay. Did you have any involvement in the --
13 PowerPlan's purchase of Accufile from another company?

14 A. I was not involved in that process.

15 Q. Do you know anything at all about the acquisition of
16 Accufile?

17 A. I mean, once it was completed, I mean, obviously we
18 had several team members join our team from -- I believe it was
19 -- Information Intellect was the company. But -- but I wasn't
20 involved in the negotiations or don't have any information
21 about the process or anything like that of how that came to be.

22 Q. Okay. Do you know who was involved from PowerPlan?

23 A. I believe it was primarily led by Pat Pelling (ph).
24 I don't know who else from PowerPlan was involved.

25 Q. Have you ever heard the phrase plant follows tax used

1 at PowerPlan?

2 A. Yes.

3 Q. What does that mean?

4 A. So it's the idea that a customer who has a tax
5 product from PowerPlan may be interested in also implementing
6 our plant product, which is -- refers to our fixed asset
7 project accounting kind of umbrella of products.

8 Q. Is there a reason why customers would adopt a tax
9 product before a plant product?

10 A. I mean, many customers have implemented both at the
11 same time, and some customers have implemented a tax product
12 first. It kind of depends on their business needs or
13 requirements. In some cases, the tax leader maybe has a more
14 urgent need and the project implement PowerTax was smaller than
15 implementing a larger number of products that we would call the
16 umbrella plant.

17 Q. Did PowerPlan offer a lower price point for PowerTax
18 in order to get its foot in the door and have utilities?

19 MR. FAZIO: Objection to form and foundation.

20 THE WITNESS: I don't believe that the price point of
21 PowerTax was based on the -- trying to get the foot in the
22 door. It was definitely based on the particular value
23 that the product would compel to customers.

24 BY MR. MAYES: (Resuming)

25 Q. Okay. PowerTax was priced lower than the plant

1 modules; is that true?

2 A. I mean, we have a large array of products and they're
3 kind of each priced based on market -- market conditions and
4 market value of those solutions. So as a matter of fact, yes,
5 the PowerTax product is priced at a lower price point than the
6 -- all of the multiple products. So typically a plant
7 implementation would involve, you know, at least three or four
8 products, maybe more, depending on the scope of the project.

9 (Plaintiff's Exhibit No. 189 was marked and identified.)

10 BY MR. MAYES: (Resuming)

11 Q. Mr. Dahlby, I'm handing you Exhibit 189. Take a look
12 at that and tell me if you've seen that before.

13 A. The -- it's an e-mail that I sent, so I would have
14 been -- I have seen it.

15 Q. So was it true at this time that historically tax was
16 usually at [REDACTED] and plant was [REDACTED]? I think that that's
17 [REDACTED].

18 A. Yes. The [REDACTED] would be [REDACTED], so -- yeah, so this
19 would have been, you know, legacy pricing from a historical.
20 Yes, that was the relative relationship and pricing.

21 Q. Okay. And then, the next paragraph says, "In
22 addition to tax value being less, there was a plant follows tax
23 approach where many customers would buy tax approved by tax VP,
24 and through the project we'd look for all the opportunities for
25 better data and use tax to help sell plant." Is that true?

1 A. Yes.

2 Q. That was a strategy that PowerPlan used?

3 A. That's correct.

4 Q. And that was a successful strategy?

5 A. It has been, yes.

6 Q. It would be reasonable for Lucasys to use a similar
7 strategy to break into the market, wouldn't it?

8 MR. FAZIO: Objection to form and foundation.

9 THE WITNESS: I'm not sure what Lucasys' strategy is.

10 So I know from the website they have a lot of products
11 that they've marketed, so I don't know that that is their
12 strategy.

13 BY MR. MAYES: (Resuming)

14 Q. Are you aware that a trade secret owner must take
15 reasonable steps to protect it or they forfeit legal
16 protection?

17 A. Yes.

18 Q. Okay. How long have you had that understanding?

19 A. Since joining PowerPlan is my understanding. I mean,
20 we've talked about intellectual property in a broader sense,
21 you know, generally over -- over the years.

22 Q. So you were aware of that legal structure in 2010?

23 A. Yes.

24 Q. Okay. Were you ever given any sort of formal
25 training documents about intellectual property during your time

1 at PowerPlan?

2 A. Not that I recall.

3 Q. Setting aside any communications you had with counsel
4 for PowerPlan, do you recall any sort of training module where
5 this -- the steps that were needed to be taken to protect trade
6 secrets were explained to PowerPlan employees?

7 A. I'm not 100 percent affiliated with our current
8 on-boarding training, so I'm not sure they're -- what all is
9 included in that. I know we have -- in many of our training
10 sessions, we have, you know, slides where we walk through that
11 this is confidential information and it's protected under
12 license agreements; for instance, like when we have customer
13 training and things like that.

14 Q. Okay. And when -- when were slides like that first
15 used at PowerPlan as far as you know?

16 A. I don't remember the exact time that they were
17 introduced, but it wasn't just as of recent. It's been many --
18 over the years we've had those in there as well as obviously
19 the proprietary and confidential type of footnotes have always
20 been a standard around our documentation that we would talk to
21 employees about making sure that the documents are
22 appropriately --

23 Q. Okay. And I'm asking specifically about formal
24 training modules or slide decks. Do you recall ever having one
25 of those delivered to you personally?

1 A. I do not.

2 Q. At any point during your 20 years at PowerPlan; is
3 that correct?

4 A. That's correct.

5 Q. How many people report to you?

6 A. Around 40. Reporting to me is four. The overall
7 team is around 40.

8 Q. Okay. Have you ever delivered any formal training to
9 the four people who directly report to you about what's
10 required to protect trade secrets?

11 A. Not in the last six months.

12 Q. Okay. How about ever?

13 A. I mean, I'd say trade secrets is -- or proprietary
14 confidential information is a conversation that comes up from
15 time to time, but it wasn't a formal training.

16 Q. Okay. So is the answer to my question no; you don't
17 recall ever delivering formal training on what's needed to
18 protect trade secrets to any of your direct reports while you
19 worked at PowerPlan?

20 A. Like formal training as in a scheduled training
21 session, I have not done that.

22 Q. Okay. Have you required the people who report to you
23 to deliver any formal training to their direct reports about
24 what's required to keep a trade secret protected?

25 A. I personally have not, but I know we have various

1 training sessions that all new employees go through and I'm not
2 familiar with the full on-boarding training and what's included
3 in that, so --

4 Q. Okay. But you have never instructed your direct
5 reports to deliver formal training to their -- the employees
6 they supervise about what is required to protect trade secrets;
7 is that true?

8 A. I have not instructed my employees to -- to deliver
9 that training. Now, all of our customers -- I mean, all of our
10 employees have that employee handbook that includes all of our
11 guidelines and all those things that -- when they're on-boarded
12 that they go through, and there's a frequent review process. I
13 don't remember the timing of that review, but they do
14 acknowledge those things and review those documents on a -- I
15 believe it's an annual basis or it might be a biannual basis
16 that they review the employee handbook, and that's part of our
17 kind of annual training along with other trainings, like
18 security training and other things like that.

19 Q. And those should be written documents you're talking
20 about right now, correct?

21 A. Yes.

22 Q. Okay. So PowerPlan keeps copies of those sorts of
23 documents and should be able to produce them if it has them,
24 correct?

25 A. The -- yeah, for the employee handbook, for instance,

1 yes, I would assume that that could be produced.

2 Q. Okay. Other formal training programs that PowerPlan
3 has, those are also delivered through, you know, some sort of
4 slide deck or written materials; is that correct?

5 A. Other training and also it leverages third parties.
6 Like, I believe one of them is SI Global. I don't know of all
7 of them, but that's one example where we -- we have annual
8 training requirements that, you know, you're tracked and
9 managed on those requirements.

10 Q. Were third parties delivering training back in 2010
11 to PowerPlan?

12 A. Not that I recall.

13 Q. Are you aware of RCC?

14 A. Yes.

15 Q. What is RCC?

16 A. Regulated Capital Consultants; is that -- I assume
17 that's the RCC that you're speaking about.

18 Q. Yeah, that's correct.

19 A. They're a consultancy. I believe they're based here
20 in Atlanta; at least they were last I was aware. And they
21 provide services to many PowerPlan customers as well as
22 non-PowerPlan customers is my understanding.

23 Q. Do you have an understanding of what sorts of
24 services RCC offers to PowerPlan customers?

25 A. What we've heard from customers is they provide

1 different types of consulting. They provide both functional as
2 well as technical consulting. They do -- they'll do user
3 training. They'll do -- they'll even perform system operations
4 is our understanding. They'll take a user activity and perform
5 user activities.

6 Q. Are you aware that RCC has historically done data
7 cleansing and remediation projects for PowerPlan customers?

8 A. I have heard that they've done that, yes.

9 Q. Okay. And that would involve RCC accessing PowerPlan
10 databases, extracting the data, modifying it, and putting it
11 back into the PowerPlan databases; isn't that true?

12 A. Yes. That process would involve those types of
13 activities. Obviously we're not -- the environments, if
14 they're on an on-premise customer, are controlled by the
15 customer, so what access they're provided is based on the
16 customer's process. So whether or not they had access to the
17 database, I don't know whether the customer gave them the data
18 or -- I believe they may have -- I believe they have done that
19 in the past, so --

20 Q. Arc-2 has also done that same thing, isn't that true?

21 A. I believe that to be true.

22 Q. Do you know Mike Hamby (ph)?

23 A. I do.

24 Q. Do you know if Mike Hamby ever had a non-disclosure
25 agreement with PowerPlan?

1 A. I believe he had a non-disclosure agreement with
2 PowerPlan.

3 Q. Okay. So if Mr. Burts said Mike Hamby refused to
4 sign a non-disclosure agreement with PowerPlan, he would have
5 been mistaken?

6 MR. FAZIO: Objection to form and foundation.

7 THE WITNESS: So Mike Hamby had a -- there was an
8 updated employment agreement that we asked new employees
9 to sign, and then old employees were asked to sign that
10 new agreement and Mike did not sign that new agreement
11 that had -- may have had different terms in it than he had
12 signed previously, but I believe he -- I believe he had a
13 non-disclosure. I don't -- I think that his concern may
14 have been around other areas of that, like whether or not
15 he could go work for a competitor.

16 BY MR. MAYES: (Resuming)

17 Q. Do you know if he ever signed that updated employment
18 agreement?

19 A. He did not.

20 Q. Was he still kept on as an employee?

21 A. He was.

22 Q. Okay. Do you know Jason Cohn (ph)?

23 A. I do.

24 Q. Do you know if Jason Cohn ever signed a
25 non-disclosure agreement with PowerPlan?

1 A. I believe he did, but I don't have a -- I don't know
2 for a fact.

3 Q. Have you ever seen one?

4 A. I have not seen employee records like that.

5 Q. Okay. If he says that he never signed a
6 non-disclosure agreement with PowerPlan, would you have any
7 reason to dispute that?

8 A. So my understanding was he was given some more
9 documents than I was given in 2010, and my recollection is
10 there were non-disclosure requirements inside of the -- those
11 documents as it related to stock and equity grants when
12 PowerPlan was sold to JMI and TPG. So my understanding was he
13 was granted those. I don't -- I assumed he signed them in
14 order to receive those and I believe there were those types of
15 clauses in there. I have not looked at the document in ten
16 years, so --

17 Q. Did you have any sort of non-disclosure agreement
18 before that agreement you referenced in 2010?

19 A. I did.

20 Q. Where did those come from?

21 A. The employee on-boarding process.

22 Q. Do you know if Mr. Cohn had any similar
23 non-disclosure agreement prior to 2010?

24 A. I do not. I wasn't involved in his hiring. He was
25 an employee when I started.

1 Q. Was it your understanding that he was the owner, for
2 lack of a better word, of the PowerTax source code at PowerPlan
3 for a period o time?

4 MR. FAZIO: Objection to form and foundation.

5 THE WITNESS: He would have been one of the
6 developers. I don't know if I would call him the owner
7 necessarily. But he would have been the role -- I think
8 we called it code owner, but -- meaning like the person
9 who collected all the code for a particular product.

10 BY MR. MAYES: (Resuming)

11 Q. Sure. And I don't mean own in the legal sense. I
12 mean the person with primary responsibility for that code was
13 him; is that true?

14 A. I'm not exactly sure between him and Pat how they
15 managed that, but he was definitely involved.

16 Q. Okay. And through that, he would have known the
17 architecture of the PowerTax software; isn't that true?

18 A. Yes.

19 Q. If Mr. Cohn said he never was told that any
20 particular aspect of the PowerTax software was a trade secret,
21 would you have any reason to dispute that?

22 MR. FAZIO: Objection to form and foundation.

23 THE WITNESS: I don't have -- I don't know that --
24 why he would say that of if he would have said that. I
25 don't have a reason -- nobody would have said it that way.

1 BY MR. MAYES: (Resuming)

2 Q. Okay. Just my question is just if he said that,
3 would you believe -- would you have any reason to say that's
4 not true that he said that?

5 MR. FAZIO: Same objections.

6 THE WITNESS: What do you mean by not?

7 BY MR. MAYES: (Resuming)

8 Q. Okay. So if Mr. Cohen said, "No one ever told me
9 that any particular aspect to the PowerTax software was a trade
10 secret," would you say that's not true?

11 MR. FAZIO: Same objections.

12 THE WITNESS: So in general, we've talked about
13 intellectual property and it would have definitely been a
14 part of our intellectual property. Now, the word trade
15 secret was not something that we used internally to talk
16 about the product and the different components of the
17 product.

18 BY MR. MAYES: (Resuming)

19 Q. When you say we had discussions about intellectual
20 property, who is we?

21 A. So, I mean, generally like all of our contracts have
22 -- with our customers talk about intellectual property. Just I
23 guess a generalized comment -- I guess I don't have a specific
24 conversation in mind, but just it was definitely a -- when we
25 signed contracts or when we signed SOWs, any of those things,

1 there were always standard clauses with all of those that would
2 talk about our intellectual property.

3 Q. So aside from the clauses in the customer contracts,
4 do you recall a specific discussion with any of the PowerPlan
5 executives where they said, "Here are what our -- here is what
6 our intellectual property consists of at PowerPlan?"

7 A. Yeah. We've definitely talked about how our
8 intellectual property incorporates our software, our database,
9 our user guides, our manuals, our project documentation. All
10 of those things are part of our intellectual property.

11 Q. Okay. And not talking about, you know, since 2019,
12 did you have those discussions at the time Jason Cohn was
13 employed by PowerPlan?

14 A. Yes.

15 Q. Okay. Who was involved in those conversations that
16 you recall?

17 A. I mean, we've had those conversations with the people
18 on my projects that I was working on. We've had those
19 conversations with our customers, other PowerPlan executives.
20 So John Andrews or Ken Kelly at the time would have been the
21 CEO -- CFO.

22 Q. Were these all oral conversations or did you have any
23 written documents that set forth here is what PowerPlan's
24 intellectual property is?

25 A. I mean, the contract didn't really have specific ways

1 that those terms are defined with a customer, and I think, you
2 know, internally we would have talked about it in a more
3 general -- in a more general way.

4 Q. Okay. So aside from the customer contract, is there
5 any specific document you can point to that sets forth what
6 PowerPlan considered its intellectual property in 2010, for
7 instance?

8 MR. FAZIO: Objection to form.

9 THE WITNESS: I don't recall a specific document from
10 12 years ago.

11 BY MR. MAYES: (Resuming)

12 Q. Do you recall any specific documents prior to 2019
13 that set forth PowerPlan's purported intellectual property?

14 A. I know our employee handbook has discussions and
15 definitions around, you know, kind of your employment
16 obligations around intellectual property. I -- I can't recall
17 the specifics of that document right now.

18 Q. Were you ever specifically told that the names that
19 were used for column headers in PowerPlan's databases were
20 trade secrets?

21 A. So I'm not a legal expert to define trade secret,
22 but, I mean, I think the way our database is organized,
23 including the column names and how that all fits together,
24 would be, you know, an important part of our intellectual
25 property. Is a specific column that's named description, you

1 know, that -- obviously that's not a unique way to describe a
2 column, but the way the tables are organized and the columns
3 and how they all fit together would definitely be critical to
4 our intellectual property.

5 Q. You knew that when Jason Cohn and others worked at
6 Arc-2 they were accessing PowerPlan databases on behalf of
7 their customers; isn't that true?

8 A. We had heard that, yes.

9 Q. Okay. And Arc-2 and its employees did not have
10 non-disclosure agreements with PowerPlan at the time; isn't
11 that true?

12 A. They would have been accessing those within a
13 customer environment, and those customers would have had
14 contracts with us that governed how they manage the
15 intellectual property.

16 Q. Are you aware of efforts by PowerPlan to get Arc-2 to
17 execute a non-disclosure agreement in connection with its --
18 with any of its projects for customers?

19 A. I believe there was a project several years ago where
20 they were looking to get access to project documentation and
21 our project deliverables, and we had requested that they sign a
22 non-disclosure agreement around those. I believe it was --
23 test scripts was one of the main topics of discussion.

24 Q. And they refused to sign that non-disclosure
25 agreement; isn't that true?

1 A. That's my understanding that they did not sign a
2 non-disclosure agreement.

3 Q. And despite that, PowerPlan went ahead and released
4 those scripts; isn't that true?

5 A. With understanding from the customer that they were,
6 you know, still required under their legal contract to maintain
7 the appropriate confidentiality and manage those test scripts
8 within the confines of our current contract, yes.

9 Q. So that was a yes; you did still release the test
10 scripts despite Arc-2 refusing to sign a non-disclosure
11 agreement?

12 MR. FAZIO: Objection to form.

13 THE WITNESS: So they were released, but to the
14 customer, not to Arc-2 and under the agreement of the
15 customer that those were part of the -- covered under our
16 contract.

17 BY MR. MAYES: (Resuming)

18 Q. Do you know Rob Jankovic (ph)?

19 A. I know -- yes, I know Rob.

20 Q. Did you know him when he worked at PowerPlan?

21 A. I did.

22 Q. If Mr. Jankovic said that he was never told that
23 anything specific about the PowerTax software was a secret -- a
24 trade secret, would you have any reason to dispute that?

25 MR. FAZIO: Objection to form and foundation.

1 THE WITNESS: I guess I don't know how Rob would
2 decide what was secret to his -- from his perspective, but
3 Rob would have been told about our intellectual property.
4 He would have signed an employee handbook and those sorts
5 of things that includes those definitions.

6 BY MR. MAYES: (Resuming)

7 Q. So aside from the -- the fact that he would have
8 received an employee handbook, is there any specific
9 conversation you know that Rob Jankovic had where someone said,
10 hey, this is something that is secret and needs to be
11 protected?

12 MR. FAZIO: Objection to form and foundation.

13 THE WITNESS: I did not work with Rob directly and
14 would not be aware of if that conversation did or did not
15 happen.

16 BY MR. MAYES: (Resuming)

17 Q. You wouldn't have any reason to say he's lying if he
18 says that, right, or he's wrong?

19 MR. FAZIO: Objection to form and foundation.

20 THE WITNESS: I don't believe he would be lying. I
21 think it may be a question of the definition of what was
22 asked and what he was being asked to discuss.

23 BY MR. MAYES: (Resuming)

24 Q. Are you aware of demand letters being sent to RCC in
25 2010?

1 A. I am not.

2 Q. Did you know John Williams when he worked at
3 PowerPlan?

4 A. I did.

5 Q. Did you work with him?

6 A. Not for him or -- I was not -- I did not manage him,
7 but we worked on projects together at times.

8 Q. You were not aware at the time in 2010 of any threats
9 being made to RCC or Mr. Williams?

10 A. I was not.

11 Q. Okay. As far as you know, did PowerPlan ever file
12 any lawsuits to prevent RCC from accessing PowerPlan databases?

13 A. I'm not aware.

14 Q. Prior to 2020, are you aware of any agreements
15 between RCC and PowerPlan?

16 A. No.

17 Q. Aside from what's written in the customer contracts,
18 in your dealings with customers have you ever taken steps to
19 educate customers about what specifically constitutes
20 PowerPlan's intellectual property?

21 A. Can you repeat the question?

22 Q. Sure. Aside from what's written in the customer
23 contracts, have you taken any efforts to educate PowerPlan
24 customers about what specifically PowerPlan considers its
25 intellectual property?

1 A. I recall it coming up on customer conversations, but
2 not a formal training of any -- that I'm aware.

3 Q. When is the first time you recall that coming up
4 during customer conversations?

5 A. It was a long time ago. I don't have a --

6 Q. Can you name any specific customer with whom you've
7 had those conversations?

8 A. I would have had those conversations with Duke
9 Energy. It would have been in like 2006 to 2008.

10 Q. What do you remember about those conversations?

11 A. Just discussing the -- you know, the documents and
12 things we were producing for the project that were covered
13 under our license agreement.

14 Q. What was that project?

15 A. It was an implementation of PowerPlan.

16 Q. So what specifically did you identify for Duke Energy
17 as intellectual property that was covered by the licensing
18 agreement?

19 A. I don't recall the specifics of that. I believe we
20 were talking about -- I remember talking about project
21 documents, but not -- that was the -- it was specific to the
22 project documents we were talking about.

23 Q. Okay. Do you recall any similar discussions with any
24 other customers?

25 A. I do not.

1 Q. Aside from the list of trade secrets that was
2 produced in this case or for this case in response to the
3 judge's order, are you aware of any similar document that sets
4 forth PowerPlan's trade secrets?

5 A. That's the only document I'm aware of that was
6 produced for this case, but -- so --

7 Q. Okay. So prior to that, had you ever seen at
8 PowerPlan a list of what PowerPlan considered its trade
9 secrets?

10 A. So in general, we talked about our intellectual
11 property which incorporates trade secrets, but we have not, I
12 would say, described what is a trade secret with legal advice
13 versus what is -- and put together an inventory.

14 Q. Okay. So that is a no; you do not. You never saw a
15 document that was a list of trade secrets prior to the one that
16 was produced for this case; is that true?

17 A. That is true.

18 Q. It's true that PowerPlan historically would host some
19 of its source code on customer machines; is that true?

20 MR. FAZIO: Objection to form.

21 THE WITNESS: Can you repeat the question?

22 BY MR. MAYES: (Resuming)

23 Q. Sure. Historically, it's true that PowerPlan would
24 allow customers to host the source code on their machines?

25 A. Some of our customer agreements incorporate the

1 requirement for us to provide source code to those customers so
2 that our customers will have our source code.

3 Q. And that was true -- like pursuant to their
4 contracts, they had the ability -- PowerPlan had to give them
5 copies of the source code; is that true?

6 A. Correct.

7 Q. Was that the base code, too, or just custom code?

8 A. The base code as well. It was required per the
9 contract.

10 Q. When did you first become aware of Lucasys?

11 A. When they posted a LinkedIn announcement that they
12 were formed as a business and that they were selling software.

13 Q. Do you know what year that was?

14 A. I believe it was 2018, but I don't recall the
15 specific time or date that that occurred.

16 (Plaintiff's Exhibit No. 190 was marked and identified.)

17 BY MR. MAYES: (Resuming)

18 Q. Mr. Dahlby, I'm handing you Exhibit 190. Take a look
19 at that and tell me if you've seen that before.

20 A. Yes, I've seen this.

21 Q. Was this around the time when you first learned of
22 Lucasys?

23 A. Yes. It would have been in 2018.

24 Q. If you look down at the bottom of the first page,
25 there's an e-mail from Jamie Carr to you and others; do you see

1 that?

2 A. Yes.

3 Q. That says this is from Vadim's new company. The
4 final sentence of that says spelling is a bit of an issue, but
5 the tool would be competitive to us; do you see that?

6 A. Yes.

7 Q. Was it your understanding that the ARAM calc tool
8 that he was describing would have been competitive to PowerPlan
9 software?

10 A. I guess from a contacts perspective, I don't know if
11 he was talking about this tool specifically or just in general
12 what Lucasys was promoting on their website.

13 Q. Okay. Well, the e-mail says, "Interesting tool.
14 Spelling is a bit of an issue, but the tool would be
15 competitive to us." Isn't that true?

16 A. That's what the e-mail states.

17 Q. Okay. And so my question is, do you agree with him
18 that that tool would have been competitive to PowerPlan?

19 A. The -- that individual tool, I mean, it would
20 potentially be competitive to PowerPlan.

21 Q. Okay. As far as you know, did PowerPlan take any
22 steps at this time in 2018 to identify the seriousness of any
23 threat posed by Lucasys?

24 MR. FAZIO: Objection to form.

25 THE WITNESS: The only thing I'm aware of is looking

1 at what publicly available information was -- was
2 available on their website.

3 BY MR. MAYES: (Resuming)

4 Q. Okay. Anything else?

5 A. Not that I'm aware.

6 Q. At some point, did you become aware that there was a
7 potential competitor to PowerPlan's planned tax -- sorry,
8 excuse me -- tax fixed asset product from Lucasys?

9 A. Yes. I mean, that was one of the products listed on
10 their website.

11 Q. Okay. When did you first become aware of that?

12 A. I don't recall the specific dates.

13 (Plaintiff's Exhibit No. 191 was marked and identified.)

14 BY MR. MAYES: (Resuming)

15 Q. Okay. Mr. Dahlby, I'm handing you Exhibit 191, and a
16 copy for your counsel. Actually, can I have that back? I
17 think I gave you the one I wrote on. Thanks.

18 Now, I've handed you a clean copy of Exhibit 191.
19 Take a look at that and tell me if you've seen that before.
20 You're welcome to read as much or as little of it as you want,
21 but I'm only going to ask you questions about the first two
22 pages which are kind of a thread unto their own, but take your
23 time.

24 A. Okay. Yeah. No, I'm just trying to understand where
25 the conversation was started.

1 Q. Sure.

2 A. Okay. I've reviewed the document.

3 Q. Okay. You received this e-mail thread in 2019; is
4 that correct?

5 A. I did.

6 Q. Did you read it at the time?

7 A. I would have, yes, read it.

8 Q. Okay. I want to start with the e-mail -- it's from
9 Michael Bradley on May 22nd at 10:29.

10 A. Okay.

11 Q. That includes a link to Lucasys' website; is that
12 correct?

13 A. It does.

14 Q. Would you have followed that link to see what Lucasys
15 was offering around this time?

16 A. I would have.

17 Q. Okay. Was it your understanding -- he says, "It
18 certainly makes an intrusion on our space." Do you see that?

19 A. Yes, I see that.

20 Q. Was that your assessment as well when you looked at
21 the Lucasys website?

22 MR. FAZIO: Objection to form --

23 THE WITNESS: I guess --

24 MR. FAZIO: -- and foundation. Go ahead.

25 THE WITNESS: I mean, it was clear that there was --

1 they had a competitive product that they were looking to
2 compete with us with. So I think the word intrusion is
3 maybe not how I would phrase it, but, I mean, definitely a
4 competitive product was -- was what it appeared from their
5 marketing materials.

6 BY MR. MAYES: (Resuming)

7 Q. Okay. The next e-mail in this string is from Collin
8 Curier (ph) at 11:20; do you see that?

9 A. Yes.

10 Q. Was AEP -- it references AEP. Do you know what AEP
11 is?

12 A. That's an acronym for American Electric Power.

13 Q. And this says, "Kevin Keller and Linda at AEP have a
14 meeting set up with Lucasys about an SOW." Do you see that?

15 A. Yes.

16 Q. Was this the first you learned that Lucasys was
17 potentially going to be selling software to AEP?

18 MR. FAZIO: Objection to form and foundation.

19 THE WITNESS: I mean, I -- this isn't clear if they
20 were selling software or not, but that was -- you know,
21 being aware that they were discussing a statement of work
22 or SOW, yes.

23 BY MR. MAYES: (Resuming)

24 Q. Okay. And so the next sentence says, "So the
25 competition is real." Do you see that?

1 A. Yes.

2 Q. Did PowerPlan take this seriously when they learned
3 of potential competition at AEP?

4 MR. FAZIO: Objection to form.

5 THE WITNESS: I mean, in general PowerPlan looks to
6 compete when -- and, you know, we want to win, so yes, we
7 would have wanted to understand the competition to the
8 extent possible.

9 BY MR. MAYES: (Resuming)

10 Q. Mr. Bradley says here, "Vadim is formidable and we
11 shouldn't underestimate him." Did you share that assessment of
12 Mr. Lantukh?

13 A. Vadim definitely has a deep knowledge. He had worked
14 exclusively in the PowerTax product for many, many years, so he
15 was definitely very knowledgeable. I did not work with him
16 directly, so I don't have the same level of knowledge of Vadim
17 that Michael would have, but he definitely was a very
18 knowledgeable person in the area.

19 Q. Did Mr. Bradley work directly with Mr. Lantukh?

20 A. He would have.

21 Q. If you look up to -- go back to the first page of
22 Exhibit 191, there is an e-mail from Matt Crye (ph) to Paul
23 Chris (ph) and John Erickson (ph). Do you see that?

24 A. Yes.

25 Q. Is says, "Rumor is that Lucasys has a TFA solution

1 ready to go." Do you see that?

2 A. Yes.

3 Q. What did you understand the TFA to refer to?

4 A. Tax fixed assets is that -- what PowerPlan uses that
5 acronym to mean.

6 Q. Okay. The next sentence says, "We've known about
7 Lucasys for at least a year, so having TFA by now would make
8 sense." Do you see that?

9 A. Yes.

10 Q. Do you -- did you agree with Mr. Crye's assessment
11 that having -- Lucasys having been around for at least a year
12 would have given them time to develop a tax fixed asset
13 solution?

14 A. It was definitely possible. I don't think we had a
15 -- we didn't know what resources he had and how he was going
16 about developing a product, but --

17 Q. Did Mr. Crye work with Mr. Lantukh when he was at
18 PowerPlan?

19 A. He would have had a similar relationship that I had
20 with Vadim.

21 Q. Do you know what the basis is for his next statement
22 which is, "Vadim is extremely knowledgeable on the business
23 problem?"

24 A. No. I would have to make an assumption about that,
25 but --

1 Q. What do you think he meant by -- or what was your
2 understanding at the time you read this of the business
3 problem?

4 A. The tax fixed assets is how I would have interpreted
5 this when I read the e-mail.

6 Q. Meaning like what the customers need from a tax fixed
7 asset software solution?

8 A. Yes.

9 (Plaintiff's Exhibit No. 192 was marked and identified.)

10 BY MR. MAYES: (Resuming)

11 Q. Okay. Mr. Dahlby, I'm handing you Exhibit 192. Take
12 a look at that and tell me if you've seen that before.

13 A. It's an e-mail that I would have received, yes.

14 Q. Okay. Did you read this e-mail when you received it?

15 A. I did.

16 Q. So the e-mail from Jamie Carr, do you know if this
17 was sent to more than just you?

18 A. I believe it was sent to just me.

19 Q. Okay. "Brett asked me several months ago if he
20 should be concerned about Lucasys. I said yes. My answer
21 remains yes, and considering how many people he has added
22 recently, I'm even more concerned." Do you see that?

23 A. Yes.

24 Q. Did you agree with Mr. Carr that PowerPlan should be
25 concerned about Lucasys?

1 A. I did.

2 Q. Okay. Do you know -- this LinkedIn link above that
3 paragraph, do you know whose LinkedIn page that was?

4 A. I mean, based on the link it appears to be a
5 gentleman name Vu Nguyen (ph).

6 Q. Did you know Mr. Nguyen when he worked at PowerPlan?

7 A. I did.

8 Q. What was his role at PowerPlan?

9 A. He was a consultant.

10 Q. Did he work in the tax base?

11 A. He did not.

12 Q. Did this -- seeing that Mr. Lantukh had added
13 Mr. Nguyen to the team give you concern that Lucasys' strategy
14 was the plant follows tax strategy?

15 MR. FAZIO: Objection to form and foundation.

16 THE WITNESS: The -- not related to this e-mail, but
17 their website included -- at the time included solutions
18 for accounting as well as tax.

19 BY MR. MAYES: (Resuming)

20 Q. Do you recall if there was a competitive RFP put out
21 by AEP in the summer of 2019?

22 A. I'm aware that there was an RFP, yes.

23 Q. Did PowerPlan put in a bid for that RFP?

24 A. We did.

25 Q. Was PowerPlan concerned that Lucasys might compete

1 for that RFP?

2 MR. FAZIO: Objection to form.

3 THE WITNESS: Yes. I believe that was one of the

4 potential competitors for that RFP that we assumed was --

5 would have received that RFP.

6 (Plaintiff's Exhibit No. 193 was marked and identified.)

7 BY MR. MAYES: (Resuming)

8 Q. Okay. I'm handing you Exhibit 193. Take a look at
9 that and tell me if you've seen that before.

10 A. Yes, I've seen this before.

11 Q. Okay. Did you read this e-mail thread at the time
12 you received it in 2019?

13 A. I did.

14 Q. I want to focus on the e-mail on the first page --
15 bottom of the first page at 7:25 a.m. from Jamie Carr. Do you
16 see that?

17 A. Yes.

18 Q. Okay. It says, "Here is a draft of the AEP RFP. The
19 official release is set for today. You'll see it's worded very
20 generally and if Vadim actually has a product, we could be in
21 for a battle, especially if he partners with someone who has
22 tax accounting experience." Do you see that?

23 A. Yes.

24 Q. Did you share Mr. Carr's concern that PowerPlan could
25 be in for a battle at AEP?

1 MR. FAZIO: Objection to form and foundation.

2 THE WITNESS: So my recollection of the RFP is it
3 included not only services but also software, and so that
4 was the difference than, you know, maybe prior -- prior
5 RFPs with AEP or other customers that included the
6 software and services. So that definitely gave us a
7 reason to believe that they had built software.

8 BY MR. MAYES: (Resuming)

9 Q. And you thought it was particularly noteworthy that
10 the RFP did not specify PowerTax; isn't that true?

11 A. Correct.

12 Q. And did you interpret from that that AEP might be
13 looking to change software providers?

14 A. Based on the RFP and the way it was worded, we
15 believe they were at least evaluating software providers.

16 Q. In response to this AEP RFP, PowerPlan submitted a
17 deeply discounted bid; is that correct?

18 MR. FAZIO: Objection to form and foundation.

19 THE WITNESS: I don't recall the specifics of the
20 bid.

21 (Plaintiff's Exhibit No. 194 was marked and identified.)

22 BY MR. MAYES: (Resuming)

23 Q. Mr. Dahlby, I'm handing you Exhibit 194. Take a look
24 at that and tell me if you've seen that before.

25 A. I have.

1 Q. This is related to the AEP bid we discussed; isn't
2 that true?

3 A. Yes.

4 Q. If you look at the e-mail from John Erickson at the
5 bottom of Page 1, there's a paragraph that says, "The details
6 are below, but we feel that keeping the competition out of AEP
7 is very important to our long-term success at AEP from a tax
8 perspective and have priced this services opportunity to
9 accomplish that goal." Do you see that?

10 A. I do.

11 Q. Okay. The competition that this is referring to is
12 Lucasys; isn't that true?

13 MR. FAZIO: Objection to form.

14 THE WITNESS: I would not classify that as --
15 competition as Lucasys.

16 BY MR. MAYES: (Resuming)

17 Q. Okay. You do not believe -- I mean, we just talked
18 about you believe that Lucasys was going to compete on this AEP
19 RFP; isn't that true?

20 A. Lucasys among others were going to compete, yes.

21 Q. Okay.

22 A. They were not the only person that we assumed would
23 compete for this work.

24 Q. Okay. Take a look at the second page. You'll see
25 that this quotes a [REDACTED] percent discount for services; is that

1 correct?

2 A. Yes.

3 Q. That's a level of discount that has to -- had to be
4 approved at the time by the CEO of the company; isn't that
5 true?

6 A. Based on the e-mail here, that's who it says the
7 approver is.

8 Q. So in order to give a [REDACTED] percent discount, it had to
9 go all the way up to the CEO of the company; is that correct?

10 A. I wasn't involved in the discounting process, but, I
11 mean, I -- I believe there are limits and this one appears to
12 have gone to Joe Gomes, so -- he is our CEO.

13 Q. Okay. Do you recall at any point prior to this
14 PowerPlan ever offering a discount on services that was so
15 large that it needed to go to the CEO for approval?

16 A. I do.

17 Q. Okay. When was that?

18 A. I don't recall.

19 Q. Was it typical for PowerPlan to discount its services
20 by 36 percent?

21 A. I would not describe it as typical.

22 Q. Okay. And when this e-mail from Mr. Erickson says
23 that they have priced this services opportunity to accomplish
24 that goal, that goal is keeping the competition out of AEP;
25 isn't that true?

1 A. I would not say that that's -- that's the goal. The
2 goal is to maintain our -- from a services business
3 perspective, maintaining a relationship with your customer is
4 always, you know, an important part of the services business,
5 and so that would be to maintain that services relationship
6 with the customer.

7 Q. So when you read this sentence here that says, "The
8 details are below, but we feel that keeping the competition out
9 of AEP is very important to our long-term success at AEP from a
10 tax perspective and have priced this services opportunity to
11 accomplish that goal," you did not interpret that goal to be
12 keeping the competition out of AEP; is that true?

13 A. I would interpret that goal to be to keep our
14 relationship and winning services with AEP.

15 Q. Despite the 36 percent discount, PowerPlan lost this
16 RFP bid; isn't that true?

17 A. That is accurate.

18 Q. PowerPlan around this same time also lost a bid for
19 services work at NextEra/Florida Power & Light to Lucasys;
20 isn't that true?

21 A. I don't recall the specifics of if it was a bid or
22 what the process was. I'm aware that Lucasys was doing
23 services at NextEra.

24 Q. Okay. And there had been an RFP -- do you recall if
25 there was an RFP at Florida Power & Light for services?

1 A. We've definitely done RFPs for Florida Power & Light.
2 I don't know if that set of specific work was an RFP or not.

3 (Pleading's Exhibit No. 195 was marked and identified.)

4 BY MR. MAYES: (Resuming)

5 Q. Okay. Mr. Dahlby, I'm handing you Exhibit 195. Take
6 a look at that and tell me if you've seen that before.

7 A. I have seen this.

8 Q. Okay. Would you have read this e-mail at the time?

9 A. Yes.

10 Q. Okay. This was around the same time as the e-mail on
11 the AEP RFP we just looked at; isn't that true, both In July of
12 2019?

13 A. That -- yes, that appears to be the case.

14 Q. Okay. And this -- aside from the top e-mail, the
15 e-mails underneath are describing PowerPlan having lost an
16 opportunity at Florida Power & Light; isn't that true?

17 A. Yes. This is a communication from Florida Power &
18 Light indicating that they did not select PowerPlan for this
19 particular project.

20 Q. Okay. And their reason for doing that, at least
21 according to this e-mail from Roger Philip at 4:09 on
22 July 19th, is ultimately the team selected the lowest price
23 bidder. Do you see that?

24 A. Yes, I see that.

25 Q. Okay. You understood that Lucasys had actually won

1 that work; isn't that true?

2 A. At this time, I don't know if I would have been aware
3 if Lucasys had won that work or not, but I believe we
4 understood Lucasys to be one of the competitors for that one.

5 Q. Okay. Well, can you explain to me why you said,
6 "Brett, this is the opportunity we think the Lucasys letter to
7 FPL could impact," if you did not understand Lucasys to have
8 won that work?

9 MR. FAZIO: Objection to form.

10 THE WITNESS: The reason I would have said that was
11 to make sure that Brett was aware that there was work that
12 potentially could have gone to Lucasys. I don't know that
13 we were aware at the time that it had gone to Lucasys, but
14 we were aware that they were one of the --

15 BY MR. MAYES: (Resuming)

16 Q. What did you mean when you said the Lucasys letter to
17 FPL?

18 A. My recollection is there was concern we had over
19 consulting work around Lucasys and our intellectual property
20 and making sure that someone who was building competing
21 software while also having access to our intellectual property
22 was -- was a concern. I think -- I'd have to go back and look
23 at the history, but I believe we were talking about, you know,
24 how to inform our customers or how we look at making sure we're
25 protecting ourselves from that risk.

1 Q. And so when you say, "This is the opportunity we
2 think the Lucasys letter to FPL could impact," what you were
3 telling Mr. Burts is we could win this work that we lost if we
4 can get Florida Power & Light to fire Lucasys; isn't that true?

5 A. That is not --

6 MR. FAZIO: Objection to form and foundation.

7 THE WITNESS: That is not true.

8 BY MR. MAYES: (Resuming)

9 Q. Okay. So that's not what you meant when you say
10 could impact this opportunity?

11 MR. FAZIO: Objection to form.

12 THE WITNESS: This could impact -- if Lucasys had won
13 that work, it would have impacted our customer, Florida
14 Power & Light.

15 BY MR. MAYES: (Resuming)

16 Q. So just so I'm clear, when you tell Mr. Burts, "This
17 is the opportunity we think the Lucasys letter to FPL could
18 impact," you were not suggesting to him that you could get this
19 work that you had lost from Florida Power & Light?

20 MR. FAZIO: Objection to form and foundation.

21 THE WITNESS: That was not what I was suggesting.

22 BY MR. MAYES: (Resuming)

23 Q. Okay. You now know that Lucasys did, in fact, win
24 this work; isn't that true?

25 A. I don't recall the specific work they did versus a

1 specific proposal, but I do know they did work at FPL/NextEra,
2 yes.

3 Q. Okay. And PowerPlan reached out to Florida Power &
4 Light to tell them that PowerPlan would not consent to them
5 using Lucasys; isn't that true?

6 A. I guess we did not say they couldn't use Lucasys, but
7 we communicated that we would not consent to Florida Power &
8 Light providing access to our confidential intellectual
9 property.

10 Q. Well, you told them that they couldn't have any
11 access to PowerPlan's software at all; isn't that true?

12 A. That would be incorporated in our confidential
13 intellectual property, yes.

14 Q. And as a result of those communications, Florida
15 Power & Light terminated its relationship with Lucasys; isn't
16 that true?

17 A. Yes.

18 Q. At some point, did you become aware that Lucasys was
19 providing services to Suez?

20 A. I was made aware of that, yes.

21 Q. And Suez was a PowerPlan customer?

22 A. Yes, and also would have referred to them as United
23 Water because that was the original name of the business when
24 they first became a customer.

25 Q. And they're now known as something else, correct?

1 A. Yes.

2 Q. Veolia; is that it?

3 A. Something with a V. I don't -- Veolia sounds right.

4 MR. MAYES: It's 10:45. Why don't we take a
5 ten-minute break?

6 MR. FAZIO: Sure.

7 VIDEOGRAPHER: Off the record.

8 (BREAK TAKEN)

9 VIDEOGRAPHER: Back on the record at 10:57 a.m.

10 BY MR. MAYES: (Resuming)

11 Q. Mr. Dahlby, can you please confirm for the record
12 that while we were on break we did not have any substantive
13 discussions about the case?

14 A. Yes, I can confirm.

15 Q. Thanks. Before the break, we were talking about
16 Exhibit 195. Do you still have that in front of you?

17 A. I do.

18 Q. I think -- I asked you some questions about how I
19 interpreted that first sentence. Can you tell me what you did
20 mean by, "This is the opportunity we think the Lucasys letter
21 to FPL could impact?"

22 A. The comment would have been around the project the
23 customer was undertaking, so, you know, we -- internally,
24 opportunity and project oftentimes are used in a, you know,
25 similar manner, so that would have been the -- what I was

1 communicating to Brett was that this would affect their
2 project.

3 Q. Okay. In what way did you think it could affect that
4 project?

5 A. If they had signed with Lucasys for that work, they
6 would have potentially to find a new vendor for that work if
7 they couldn't perform that work without providing Lucasys
8 access to -- to the information we were not consenting to.

9 Q. Okay. I think you said before but you were not
10 hopeful that PowerPlan could be the replacement vendor in that
11 scenario; is that true?

12 A. That was not. The intent of communicating with the
13 customer around our intellectual property was for us to take
14 that work.

15 Q. You mentioned that you had four people who reported
16 to you. Who are those people?

17 A. Amy Griffith -- Griffin, she runs our support
18 organization. Kristin Wallace runs our managed services
19 organization. Kim Pearch (ph) runs our customer success
20 organization. And Sam Gowdy (ph) runs our services operations
21 group.

22 Q. Sam Gaddy?

23 A. Gowdy.

24 Q. Gowdy? Thank you. You mentioned earlier that you
25 had discussions at PowerPlan about PowerPlan's intellectual

1 property and protecting it; do you recall that?

2 A. Yes.

3 Q. Have you had those discussions with those four people
4 you just mentioned?

5 A. I don't recall any specific instance where we've
6 talked about a particular situation around that.

7 Q. So as you sit here, you can't recall a specific
8 discussion with any one of those four people?

9 A. Not as -- particularly with me, no.

10 Q. Okay. Were you aware that at some point in the fall
11 of 2019, PowerPlan sent a cease-and-desist letter to Lucasys?

12 A. I'm aware of that, yes.

13 Q. Did you see a copy of that letter at the time it was
14 sent?

15 A. Yes.

16 (Plaintiff's Exhibit No. 196 was marked and identified.)

17 BY MR. MAYES: (Resuming)

18 Q. Mr. Dahlby, I'm handing you Exhibit 196. Have you
19 seen this before?

20 A. I have.

21 Q. And is this the letter that you were referring to a
22 minute ago as having seen?

23 A. I'm not following.

24 Q. Sorry. Did you see this letter around the time it
25 was sent in October of 2019?

1 A. I did.

2 Q. Okay. Do you know if this pre-dated communications
3 to PowerPlan customers about Lucasys?

4 A. I don't recall the specific dates we had different
5 customer conversations.

6 Q. Okay. But you are aware that at some point after
7 this -- or at some point in the fall of 2019, PowerPlan reached
8 out to several Lucasys customers?

9 MR. FAZIO: Objection to form and foundation.

10 THE WITNESS: I was involved with two conversations
11 with customers around that time, yes.

12 BY MR. MAYES: (Resuming)

13 Q. Okay. Which customers were those?

14 A. NextEra/FPL and AEP.

15 Q. And tell me what you recall about those
16 conversations.

17 A. That we communicated our concerns around having
18 access to our intellectual property while they were
19 simultaneously building competing products or similar products,
20 and the risk that they might use that intellectual property to
21 unfairly build their software.

22 Q. Did you communicate to -- let's do them one at a time
23 -- to NextEra and FPL -- strike that. I think you already said
24 this.

25 Did you -- did PowerPlan communicate during those

1 conversations to AEP that AEP should not permit Lucasys to
2 access PowerPlan's software?

3 A. We would have said that they -- we did not consent
4 per our license agreement to them accessing our confidential
5 intellectual property.

6 Q. And you said the same thing to Florida Power & Light?

7 A. Yes.

8 Q. Were you involved personally in the communications to
9 Florida Power & Light?

10 A. I was in one of the calls led by Brett Burts when we
11 communicated with them.

12 Q. Did you tell Florida Power & Light -- or did
13 Mr. Burts tell Florida Power & Light that PowerPlan believed
14 Lucasys was misappropriating PowerPlan trade secrets?

15 A. My recollection was we communicated that it was the
16 risk of it. We did not communicate that they -- they had.

17 Q. Okay. Let's talk about with AEP. Were you on calls
18 with AEP personally?

19 A. I was on at least one call with AEP.

20 Q. Okay.

21 A. I think it was two, actually.

22 Q. Okay. On those calls, did anyone at PowerPlan tell
23 anyone at AEP that PowerPlan believed Lucasys was
24 misappropriating PowerPlan trade secrets?

25 A. I don't recall that being communicated.

1 Q. Okay. Who else was involved in the calls at Florida
2 Power & Light?

3 A. I recall Brett Burts as well as Jonathan Suture (ph)
4 being in the call from PowerPlan. On the customer side, I
5 recall Leo Quintana (ph). I don't remember. I believe Jim May
6 (ph) or Keith Ferguson. I don't remember which of those was on
7 that call.

8 Q. Okay. Who was involved in the AEP calls?

9 A. It would have been the same. Jonathan, Brett, and
10 myself were on that call from PowerPlan. We may have had
11 outside counsel at the time on those calls. I don't recall.

12 Q. Who was involved from the AEP side on those calls?

13 A. I don't remember the entire attendee list. I
14 remember Jimmy Lindy (ph) who was on the tax side and Jeff
15 Horsted (ph) who was on the controller's team.

16 Q. What specifically do you recall being said to Florida
17 Power & Light about Lucasys on the call?

18 A. That we had concerns around them accessing our
19 intellectual property while they were simultaneously building
20 software or had built software. I -- and I think we had
21 thought they had built software at the time. And so that was a
22 -- from a PowerPlan perspective, that was not something we were
23 going to consent to was them having access to our intellectual
24 property. We would have communicated that they could do work
25 with Lucasys, they could -- you know, we weren't suggesting

1 they can't do work with Lucasys. It was just we were not
2 consenting to their access to our intellectual property.

3 Q. What specific intellectual property did you tell
4 Florida Power & Light Lucasys could not access?

5 A. Some of the examples we would have provided would
6 have been the database schema, you know, user guides, or other
7 documentation.

8 Q. At the time you made those calls, were you aware of
9 any facts or evidence that Lucasys had actually used any of
10 that intellectual property to build its software?

11 A. I was not aware.

12 Q. What was Florida Power & Light's response on that
13 call, if you -- to the extent you remember?

14 A. I believe they said they were going to have to go
15 back and look at documents and discuss it. At some point
16 later, I believe they communicated that they had stopped giving
17 access to Lucasys to our intellectual property.

18 Q. Okay. For the AEP call, what specifically do you
19 recall being said about Lucasys on those calls?

20 A. It would have been the same communication around
21 concerns about access to our intellectual property and
22 confidential arrangement as they're building products.

23 Q. And what do you recall AEP's response being?

24 A. I believe their response was, "We're going to meet
25 internally and we'll get back to you."

1 Q. Were you asked to put it in writing?

2 A. I believe they did ask for that and we sent them a
3 letter.

4 Q. What intellectual property, if any, did you tell AEP
5 that Lucasys should not be allowed to access?

6 A. It would have been the same -- same types of
7 examples. I don't know if we gave them an exhaustive list, but
8 we would have said the software, the source code, the database,
9 the documentation.

10 Q. And at that point in time -- well, do you recall
11 which call came first, Florida Power & Light or AEP?

12 A. My recollection is Florida Power & Light came first.

13 Q. You had not learned any other facts or evidence that
14 led you to believe that Lucasys had actually used any
15 intellectual property from PowerPlan to build its software by
16 the time AEP called; isn't that true?

17 MR. FAZIO: Objection to form and foundation.

18 THE WITNESS: So my recollection is we did not have
19 any additional information at that time.

20 BY MR. MAYES: (Resuming)

21 Q. Okay. Did Jonathan Suture say anything on those
22 calls?

23 A. I -- I don't recall.

24 Q. Were there -- was there any discussion on those calls
25 of potential liability to the customers if they permitted

1 Lucasys to access PowerPlan's software?

2 A. I don't recall that specifically being discussed, but
3 it may have been.

4 Q. Have you ever suggested that a customer might have
5 liability if they permit third parties to access PowerPlan
6 software?

7 A. I don't recall having that direct conversation with a
8 customer.

9 Q. Do you ever recall suggesting someone else have that
10 conversation with customers?

11 A. I don't recall any specific situation where that has
12 happened, but I -- I mean, I know we've had internal
13 discussions, and that would -- that could be something that
14 could come up.

15 (Plaintiff's Exhibit No. 197 was marked and identified.)

16 BY MR. MAYES: (Resuming)

17 Q. I'm handing you Exhibit 197. Lucasys -- I mean, I'm
18 sorry. Strike that.

19 PowerPlan did, in fact, send a letter to AEP. I
20 think you mentioned that a minute ago; is that true?

21 A. To my understanding, yes.

22 Q. Okay. Is this the letter? This being Exhibit 197?

23 A. Yes, I believe this was. I was copied on this letter
24 as it was sent to AEP.

25 Q. This refers to, if you look at the last paragraph

1 here, the database architecture and data model as PowerPlan's
2 intellectual property; is that correct?

3 MR. FAZIO: I'm sorry, Josh. Where are we?

4 MR. MAYES: The last paragraph, "Accordingly" --
5 second to last paragraph. "Accordingly, this confirms our
6 expectation."

7 BY MR. MAYES: (Resuming)

8 Q. Do you see that sentence?

9 A. Yes.

10 Q. Okay. When you said, you know, database schema, is
11 that the same thing as the database architecture or are those
12 different things?

13 A. No, that would be synonymous. Yes, database
14 architecture and schema.

15 Q. Okay. Is the data model different than the database
16 architecture?

17 A. The database schema would incorporate both of those
18 items.

19 Q. Okay. Folks from RCC had been accessing PowerPlan's
20 database and was -- were familiar with PowerPlan's database
21 architecture and data model for years before this; isn't that
22 true?

23 MR. FAZIO: Objection to form and foundation.

24 THE WITNESS: That's our understanding.

25 BY MR. MAYES: (Resuming)

1 Q. And they were a competitor of PowerPlan; isn't that
2 true?

3 MR. FAZIO: Objection to form.

4 THE WITNESS: RCC was a competitor within our
5 professional services space, yes.

6 BY MR. MAYES: (Resuming)

7 Q. And RCC used its knowledge of PowerPlan's database
8 architecture and data model in connection with its provision of
9 competitor services; isn't that true?

10 MR. FAZIO: Foundation.

11 THE WITNESS: All of those would have been performed
12 under -- with the customer with a license agreement, and
13 our understanding is our customers would have
14 confidentiality provisions in place with any third parties
15 that they were giving access to -- to those resources.

16 BY MR. MAYES: (Resuming)

17 Q. Okay. It is true, isn't it, that RCC employees were
18 using their knowledge of PowerPlan's database architecture and
19 data model to provide competitive services; isn't that true?

20 A. That is accurate.

21 Q. At this point in time in 2019, had PowerPlan ever
22 threatened any of RCC's customers, to your knowledge, that
23 providing access to RCC to PowerPlan software violated the
24 master services agreement?

25 MR. FAZIO: Objection to form.

1 THE WITNESS: So we had not, to my knowledge,
2 communicated that to customers.

3 BY MR. MAYES: (Resuming)

4 Q. To your knowledge, is this the first letter like this
5 that was ever sent to a customer?

6 MR. FAZIO: Objection to form.

7 THE WITNESS: To my recollection, that -- that is
8 accurate, but it -- the situation was definitely not the
9 -- it wasn't the same situation because we're not talking
10 about services competitors. I mean, it was -- you know,
11 providing services under our protection of our license
12 agreement is different than someone who could leverage
13 that to build a product that they have marketed actively
14 in the market.

15 BY MR. MAYES: (Resuming)

16 Q. But you didn't have any evidence that PowerPlan --
17 that Lucasys had actually done that; isn't that true?

18 MR. FAZIO: Objection to form.

19 THE WITNESS: It wasn't about the evidence. It's
20 about the risk that they could use that information to --
21 to leverage that information to build products.

22 BY MR. MAYES: (Resuming)

23 Q. Did you know exactly what software offerings Lucasys
24 had aside from what was on its website at this point in time?

25 A. Did not.

1 Q. Did you have any knowledge or understanding of what
2 steps Lucasys had taken to develop its software offerings?

3 A. I did not, no.

4 Q. Do you know who developed Lucasys' software?

5 A. I've learned some during the agreed process, but
6 prior to that I had no information.

7 (Plaintiff's Exhibit No. 198 was marked and identified.)

8 BY MR. MAYES: (Resuming)

9 Q. Okay. Mr. Dahlby, I'm handing you Exhibit 198. Take
10 a look at that and tell me if you've seen that before.

11 A. Yes, I have. I have seen this.

12 Q. Okay. And would you have read this e-mail chain at
13 the time you received it in February of 2020?

14 A. I would have, yes.

15 Q. The first two e-mails on the bottom of the first page
16 of Exhibit 198 appear to be follow-ups from the phone call you
17 mentioned; is that your understanding?

18 MR. FAZIO: I'm sorry. You're on what page?

19 MR. MAYES: The first page. Page 293, yeah.

20 THE WITNESS: Okay. Sorry, I missed --

21 MR. MAYES: Sure.

22 THE WITNESS: What was the question there?

23 BY MR. MAYES: (Resuming)

24 Q. The first two e-mails on the bottom of the first page
25 of Exhibit 198 appear to be follow-ups from Mr. Burts to the

1 phone conversations you mentioned earlier; is that correct?

2 MR. FAZIO: Objection to form.

3 THE WITNESS: I believe that was a follow-up to a
4 different phone conversation.

5 MR. MAYES: Okay.

6 THE WITNESS: Based on reading the initial e-mail.

7 BY MR. MAYES: (Resuming)

8 Q. Okay. When you say the initial e-mail, are you
9 talking about the e-mail at the top of the second page of
10 Exhibit 198?

11 A. The one that's dated 3/20 -- or February 6th at 3:23.

12 Q. Okay. Look at the e-mail that's dated
13 February 12th, 2020, from Mr. Burts.

14 A. Okay.

15 Q. What does the second bulletpoint there refer to?

16 A. That is a follow-up on the conversation in the letter
17 from 2019.

18 Q. Okay. And so you understand that second bulletpoint
19 to be asking -- when it says the third party, you understand
20 that to mean Lucasys?

21 A. Yes.

22 Q. And so then, the two e-mails on the bottom of the
23 first page of Exhibit 198, to the extent they're talking about
24 -- let's just do them one at a time. To the extent the bottom
25 e-mail says, "I'd like to confirm the intellectual property

1 access request," do you see that?

2 A. Yes.

3 Q. Do you understand that to be referring once again to
4 the request that Lucasys be cut off from accessing PowerPlan
5 software?

6 MR. FAZIO: Objection to form.

7 THE WITNESS: It was confirming what we had
8 communicated in the letter, yes.

9 BY MR. MAYES: (Resuming)

10 Q. Okay. And then, the next e-mail is an e-mail to--
11 internally to you and Mr. Routon; is that correct?

12 MR. FAZIO: Josh, can we just identify them by date
13 and time so he can keep them straight?

14 MR. MAYES: Sure. Yeah.

15 BY MR. MAYES: (Resuming)

16 Q. The next e-mail in this chain is Thursday,
17 February 20th, 2020, at 10:28 a.m. Is that correct?

18 A. Yes.

19 Q. Okay. And that is an internal PowerPlan e-mail only;
20 is that correct?

21 A. That's correct.

22 Q. Okay. And Mr. Burts says, "I do not have
23 confirmation from him that the third party no longer has access
24 to our IP at AEP." Did I read that correctly?

25 A. You did.

1 Q. And again, that's referring to Lucasys?

2 A. Yes.

3 Q. Okay. And the next sentence says, "And we have
4 reason to be concerned as AEP's VP of tax was very vocal with
5 me at the AGA EEI tax leadership meeting in November about his
6 support of technology disruption in the markets we -- that we
7 serve." Did I read that correctly?

8 A. Yes.

9 Q. What did you understand him to mean by support for
10 technology disruption in the markets that we serve?

11 MR. FAZIO: Objection to form and foundation.

12 THE WITNESS: Sorry. It was -- Mr. Burts had
13 communicated a conversation he had had, and I believe
14 those were the words that were said to him.

15 BY MR. MAYES: (Resuming)

16 Q. Do you know what they mean?

17 A. I mean, the -- I think -- I mean, I don't know
18 exactly how he meant to communicate that, but that was the
19 words that he shared with Brett was my understanding.

20 Q. Okay. And what was your understanding of those words
21 when you read this e-mail?

22 A. The potential for other -- new players to develop new
23 software.

24 Q. So by technology disruption, for someone to develop
25 software that competed with PowerPlan's tax software; is that

1 correct?

2 MR. FAZIO: Objection to form and foundation.

3 THE WITNESS: I mean, we -- we have competition that
4 existed prior to this. So, I mean, I think the -- it
5 wasn't competition existing. It was potential for new
6 competition, was I believe how it was communicated to
7 Brett.

8 BY MR. MAYES: (Resuming)

9 Q. Do you know who AEP's VP of tax was that this refers
10 to?

11 A. Jimmy Lindy.

12 Q. Okay. Were you involved in that discussion between
13 Mr. Lindy and Mr. Burts at the tax leadership meeting?

14 A. I was not.

15 Q. The next e-mail in the chain, the one at 10:31, is
16 from you and it says, "John Erickson has a conversation with
17 Jeff today. Do we want John to bring it up?" Is that correct?

18 A. Yes.

19 Q. And the follow-up e-mails are more or less yes; is
20 that correct?

21 A. Yes. Those are just e-mails that our -- that we
22 wanted John to bring it up.

23 Q. Do you know if that happened?

24 A. I don't recall.

25 Q. Okay. You mentioned earlier the agreed-upon process;

1 do you recall that?

2 A. Yes.

3 Q. Do you recall when that started?

4 A. I believe that was either late '19 or early 2020. I
5 don't remember the exact dates.

6 (Plaintiff's Exhibits No. 199 and 200 were marked and
7 identified.)

8 BY MR. MAYES: (Resuming)

9 Q. Mr. Burts, I'm handing you -- I mean, excuse me.
10 Mr. Dahlby, I'm handing you Exhibit 199, and a copy for your
11 counsel. I'm also going to hand you Exhibit 200 here at the
12 same time. Take a look at those and tell me if you've seen
13 them before.

14 A. Yes, I've seen these.

15 Q. Okay. And did you see them around the time of the
16 dates on these documents?

17 A. Yes.

18 Q. Okay. If you look at Exhibit 200 on the second page
19 number five, there is a DocuSign; do you see that?

20 A. Yes.

21 Q. Did you DocuSign a version of this Exhibit A?

22 A. Yes.

23 Q. Okay. And this Exhibit 200 refers in the first
24 paragraph on the first page to Exhibit 199; is that correct?

25 A. Yes.

1 Q. And at the time you DocuSigned, you had also already
2 seen Exhibit 199; is that true?

3 A. Yes.

4 Q. Okay. If you go to Exhibit 199 and flip to the page
5 number three, look at paragraph two, little sub (b) at the
6 bottom -- very bottom of Page 3, and tell me when you're there.

7 A. Yes.

8 Q. This is an obligation for PowerPlan to refrain from
9 discussing concerns about Lucasys' software development efforts
10 with PowerPlan customers other than NextEra and AEP; is that
11 how you understood this?

12 A. Yes.

13 Q. Did PowerPlan abide by this restriction?

14 A. I believe so.

15 Q. Okay. You participated in the process that's
16 described in Exhibit 199 for PowerPlan; is that true?

17 A. Yes.

18 Q. And Lucasys gave PowerPlan pursuant to this process a
19 copy of the software that it had developed; isn't that true?

20 A. I believe that was part of the process.

21 Q. Yeah. And did you come to a meeting here at the
22 Robbins firm?

23 A. I did attend the meeting.

24 Q. And Vadim Lantukh was there as well; is that true?

25 A. Yes.

1 Q. And Vadim sat and demonstrated Lucasys' software for
2 you; is that true?

3 A. That's my understanding. He -- I mean, he did
4 demonstrate software. I don't know. It was purported to be
5 their software.

6 Q. Okay. As you sit here, do you have any reason to
7 believe that Vadim lied to you in any way during any of those
8 meetings?

9 A. I do not.

10 Q. Did Vadim answer the questions that he was asked at
11 that meeting?

12 A. Yes.

13 Q. PowerPlan received as part of that process source
14 code; isn't that true?

15 A. I believe the lawyers did, yes.

16 Q. Okay. Did you ever see it?

17 A. I don't recall seeing that source code.

18 Q. Do you recall asking for anything as part of that
19 process that you were not provided?

20 A. You're asking about from Lucasys or --

21 Q. Yeah, from Lucasys.

22 A. Can you repeat the question?

23 Q. Sure. Do you recall PowerPlan asking for anything
24 from Lucasys that Lucasys did not provide to PowerPlan?

25 A. Not that I'm aware.

1 (Plaintiff's Exhibit No. 201 was marked and identified.)

2 BY MR. MAYES: (Resuming)

3 Q. Okay. Mr. Dahlby, I'm handing you Exhibit 201. Take
4 a look at that and tell me if you've seen that before.

5 A. Yes, I've seen this.

6 Q. Okay. Did you receive a copy of this e-mail around
7 the time it was sent?

8 A. I did.

9 Q. I'm sorry. Letter? Strike that. Let me start that
10 again.

11 Did you receive a copy of this letter around the time
12 it was sent?

13 A. Yes.

14 Q. I want to turn to Page 3 of the letter, and there's a
15 section called Lucasys' misappropriation of PowerPlan's trade
16 secrets and other proprietary information; do you see that?

17 A. Yes, subheading (b).

18 Q. Sorry?

19 A. Heading (b), yeah.

20 Q. Yeah. Okay. Did you read this letter at the time it
21 was sent -- around the time it was sent?

22 A. I did.

23 Q. Did you believe that the -- this Section (b), which
24 carries over all the way until Page 7, was accurate?

25 A. Yes, I did believe that.

1 Q. Okay. And this section of the letter purported to
2 set forth summary findings about Lucasys' misappropriation of
3 PowerPlan's trade secrets; is that correct?

4 A. Can you repeat that --

5 MR. FAZIO: Objection to form.

6 THE WITNESS: Can you repeat that question?

7 BY MR. MAYES: (Resuming)

8 Q. Yeah. This section that begins on Page three and
9 carries over to Page 7 describes summary level findings about
10 Lucasys' purported misappropriation of PowerPlan's trade
11 secrets; is that your understanding?

12 A. And other proprietary information.

13 Q. Sure. So the first section or first bulletpoint
14 number one, what is your understanding of what that -- what
15 that means in layman's terms?

16 MR. FAZIO: Objection. You can answer the question
17 only to the extent you can do so without revealing
18 anything you learned from or was communicated to you from
19 counsel, if you can answer that question with that
20 understanding.

21 THE WITNESS: Okay. So what was your question?

22 BY MR. MAYES: (Resuming)

23 Q. Yeah. What's your understanding of what bulletpoint
24 number one means in layman's terms? What was it that Lucasys
25 was purportedly doing that was improper?

1 MR. FAZIO: Objection to form. The letter speaks for
2 itself. You can go ahead and answer if you can do so
3 without revealing communications you've had with counsel
4 or information you received from counsel.

5 THE WITNESS: Okay. I don't know that I could
6 communicate anything more than what was written in the
7 letter then.

8 BY MR. MAYES: (Resuming)

9 Q. Okay. This bulletpoint section claims that Lucasys
10 was improperly using PowerPlan's proprietary database model by
11 having software that would access the database, retrieve and
12 export data from, and import data back to PowerPlan databases;
13 is that correct?

14 MR. FAZIO: I'm sorry. When you say bulletpoints,
15 we've got bulletpoints below and numbers above.

16 MR. MAYES: Number one -- sorry. Yeah. Number one.

17 MR. FAZIO: So we're on Page 4 still?

18 MR. MAYES: Correct.

19 MR. FAZIO: Okay.

20 THE WITNESS: That -- that's what the heading states,
21 yes.

22 BY MR. MAYES: (Resuming)

23 Q. Yeah. That's the same thing that RCC and other
24 third-party consultants do, just not using software; isn't that
25 true?

1 MR. FAZIO: Objection to form and foundation.

2 THE WITNESS: The -- I would define those as very --
3 as different. Consulting services are different than
4 software developed.

5 BY MR. MAYES: (Resuming)

6 Q. Okay. But RCC and other third-party consultants do
7 access PowerPlan's databases; isn't that true?

8 A. That is true.

9 Q. They also retrieve and alter that data; isn't that
10 true?

11 MR. FAZIO: Objection to foundation.

12 THE WITNESS: They do.

13 BY MR. MAYES: (Resuming)

14 Q. Okay. And they, they also import that data back into
15 PowerPlan databases; isn't that true?

16 A. All under a license agreement with our customers.

17 Q. So the answer is yes, they do all of those things;
18 isn't that true?

19 MR. FAZIO: Objection to form.

20 THE WITNESS: Their consulting services, yes.

21 BY MR. MAYES: (Resuming)

22 Q. So the only objection is that Lucasys had automated
23 that process; is that true?

24 MR. FAZIO: Objection to form and foundation. Are
25 you asking about his objection of what it said in the

1 letter or --

2 BY MR. MAYES: (Resuming)

3 Q. Do you understand my question?

4 A. Can you repeat your question?

5 Q. Sure. My question is, so the only objection -- the
6 only difference between what RCC and other third-party
7 consultants were doing and what Lucasys was offering through
8 its software is that Lucasys had automated it; isn't that true?

9 MR. FAZIO: Objection to form.

10 THE WITNESS: I would not say that that would
11 describe the concerns, so --

12 BY MR. MAYES: (Resuming)

13 Q. Okay. How would you describe it?

14 A. I mean, I think the overall risk was how they were
15 leveraging their intellectual property to -- to build products.

16 Q. The product that this is referring to is Lucasys'
17 copilot product; is that true, in part?

18 A. I believe that was one of the products that's
19 mentioned here in the letter.

20 Q. Okay.

21 A. I believe there were other products that were also
22 mentioned.

23 Q. Did Mr. Lantukh demonstrate the copilot product for
24 you at the meeting you attended?

25 A. I believe he demonstrated -- or provided information

1 about copilot. I believe it may have been some combination of
2 software and wireframes. I don't remember what was software
3 and what was wireframes from that.

4 Q. Okay. Let's turn to Page 5 of Exhibit 201, and
5 there's a numbered heading, number two, which says, "Lucasys'
6 ARAM calc marketing tool has copied certain PowerPlan database
7 table headings and structures." Do you see that?

8 A. Yes.

9 Q. What do you understand it to mean when it calls the
10 ARAM calc a marketing tool?

11 MR. FAZIO: And again, with all of these questions,
12 to the extent you can answer without revealing
13 communications you've had with counsel or information
14 received from counsel. With that admonition, go ahead.

15 THE WITNESS: My recollection is that's how it was
16 positioned by the Lucasys team in the meeting we had here
17 in the office.

18 BY MR. MAYES: (Resuming)

19 Q. That it was not a functional software product. It
20 was something they were using to generate leads; is that
21 accurate?

22 A. I believe they classified it as a marketing tool,
23 yes.

24 Q. Okay. The second paragraph under that heading number
25 two says, "The attachment to this letter includes two tables

1 that map the virtually identical correlation between columns in
2 the Lucasys ARAM calc tables, ARAM calc tax depreciation, and
3 ARAM calc book depreciation rates and tables and columns in the
4 PowerPlan database," is that correct?

5 A. Yes.

6 Q. And if you flip further back in this letter past the
7 Page 9 signature page, the next page is an attachment. Do you
8 see that?

9 A. I do.

10 Q. Do you believe this is one of the attachments that's
11 referred to in that paragraph we just looked at on Page 5?

12 A. Yes.

13 Q. Okay. And then, the next page is another table. Do
14 you believe this is also an attachment referenced in that
15 paragraph?

16 A. Yeah.

17 Q. So let's look at the first one of those two. Did you
18 do any of the analysis that resulted in the generation of this
19 attachment yourself?

20 MR. FAZIO: Objection. You're -- you can answer that
21 to the extent you did anything that was not -- you were
22 not asked to do by counsel. You can answer the question.
23 If it was all done at -- if it was all being done at the
24 request of counsel, I think that's privileged.

25 BY MR. MAYES: (Resuming)

1 Q. Can you answer without -- with following his
2 instruction?

3 A. It was at the request of counsel.

4 Q. Okay. If you look at the items under the Lucasys
5 ARAM calc column, is it your understanding that those are the
6 items that were found in the Lucasys software?

7 A. That's my understanding, yes.

8 Q. Okay. And it is, in fact, common for tables to have
9 column names that reflect what data is intended to be in that
10 column; isn't that true?

11 MR. FAZIO: Objection to foundation.

12 THE WITNESS: I guess, can you rephrase your question
13 or ask your question again?

14 BY MR. MAYES: (Resuming)

15 Q. Sure. You've set up Excel spreadsheets or database
16 tables in the past, haven't you?

17 A. Yes.

18 Q. Okay. And when you make a spreadsheet or a table,
19 it's common to name the columns something that's descriptive of
20 the data that's going to be in that column; isn't that true?

21 A. Yes.

22 Q. Okay. So for example, to have a column named tax
23 year, would you assume that that reflected the tax year; the
24 data that's going to be reflected in that column?

25 MR. FAZIO: Objection to form.

1 THE WITNESS: Yes. I would assume that the tax year
2 column heading would refer to the tax year.

3 BY MR. MAYES: (Resuming)

4 Q. Okay. And there's nothing secret or valuable about
5 naming columns something that describes the data that's in the
6 column; isn't that true?

7 MR. FAZIO: Objection to form.

8 THE WITNESS: So, I mean, I think from a -- it's not
9 the -- the combination of how you organize the data or
10 what a specific column name is, I would say maybe isn't as
11 important, but the -- the overall combination of all the
12 things is what -- is where we start to -- like, that's a
13 differentiation we feel is important to PowerPlan's
14 intellectual property.

15 BY MR. MAYES: (Resuming)

16 Q. Help me understand what you mean. This letter lays
17 out on this first page these item that have similar names to
18 the PowerPlan -- to some PowerPlan column names; isn't that
19 true?

20 A. That's true.

21 Q. Okay. If it's not the names that are problematic,
22 what is it about this information that's shown on this page
23 that is problematic?

24 MR. FAZIO: Objection. The letter speaks for itself
25 and if you can answer that question independent of

1 information that you've received from counsel, you can go
2 ahead and answer the question. Otherwise, you should not
3 answer it.

4 THE WITNESS: It was -- would have been conversation
5 with counsel.

6 BY MR. MAYES: (Resuming)

7 Q. Okay. And to be clear, for every one of my questions
8 throughout I am never going to be asking you for communications
9 with your counsel or things you only learned about through
10 communications with your counsel. Okay?

11 A. Okay.

12 Q. And so if I ever ask you a question and you think the
13 answer calls for that, just you can say that or you can say,
14 hey, I need to talk to Mr. Fazio; is that fair?

15 A. That's fair.

16 Q. Okay.

17 MR. FAZIO: Objection. I think the challenge is
18 you're asking about the letter that was written by counsel
19 as part of due process. So I'm not sure what he would
20 know that would not have come from counsel that would be
21 related to the letter is the challenge I'm having.

22 MR. MAYES: Okay. I mean --

23 MR. FAZIO: You can keep asking him, but I understand
24 where you're -- that's --

25 MR. MAYES: Yeah.

1 MR. FAZIO: That's the challenge that I'm having.

2 BY MR. MAYES: (Resuming)

3 Q. You would agree with me, wouldn't you, Mr. Dahlby,
4 that the items that are shown here in this first column of
5 Lucasys ARAM calc column, tax year, company, tax book, tax
6 class, those are all items of data that would be necessary to
7 do an ARAM tax calculation, wouldn't you?

8 MR. FAZIO: What page are you on?

9 MR. MAYES: It's the first page after the signature
10 page.

11 MR. FAZIO: Okay.

12 THE WITNESS: Can you repeat the question?

13 BY MR. MAYES: (Resuming)

14 Q. Yeah. These are all items of data that would be
15 necessary to do an ARAM tax calculation; isn't that true?

16 A. I'm not familiar with the ARAM calculation details to
17 be able to answer if this would be the full extent of the data
18 required in that regard.

19 Q. Well, maybe not the full extent of the data that's
20 required, but these items of data, you wouldn't have any reason
21 to think they're not items that are required to do an ARAM tax
22 calc; is that true?

23 A. Not to my knowledge.

24 Q. If you can go back to Page 5 of Exhibit 201, and look
25 at bulletpoint three. Tell me when you're there.

1 A. Okay.

2 Q. The first part -- there are two clauses in that
3 sentence. The first clause is similar to bulletpoint number
4 two, but instead of referring to the ARAM calc, it's referring
5 to the deferred tax module; is that correct? Is that your
6 understanding?

7 A. Yes.

8 Q. Okay. And if you flip back past the two pages that
9 we looked at after the signature page, there is a third page
10 which is the last page of Exhibit 201. Do you see that?

11 A. Yes.

12 Q. Okay. And do you believe that this attachment is
13 meant to show similar table headings and structures to
14 PowerPlan's for the Lucasys deferred tax module as identified
15 in that paragraph three we were just looking at?

16 A. So can you repeat the question?

17 Q. Yeah.

18 A. I'm trying to --

19 Q. Do you believe that this last page of Exhibit 201 is
20 an attachment that is supporting this third numbered
21 bulletpoint that begins on Page 5 of Exhibit 201?

22 A. Yes.

23 Q. If you turn to Page 6 of Exhibit 201, there is a
24 paragraph that begins with the word, "Second". Let me know
25 when you get there.

1 A. Okay.

2 Q. This says, "Second, Lucasys appears to have developed
3 its data model for its deferred tax module without much, if
4 any, of the type of development processes and analyses that
5 would be expected if the model was being developed from
6 scratch, such as development of business requirements leading
7 to functional design specifications and statements of business
8 rules which then evolved into a data model." Did I read that
9 correctly?

10 A. You did read that correctly.

11 Q. Okay. This was written in 2020; is that right?

12 A. Yes.

13 Q. And the materials that led to this -- or sorry. The
14 exchange of information that led to this letter took place
15 either at the end of 2019 or early 2020; is that correct?

16 A. Yes.

17 Q. And I think when we looked at earlier you agreed with
18 me that Vadim Lantukh had a good understanding of the business
19 requirements for deferred taxes; isn't that true?

20 MR. FAZIO: Objection to form.

21 THE WITNESS: He would have understood the functional
22 requirements for deferred taxes.

23 BY MR. MAYES: (Resuming)

24 Q. And he would have understood that before he ever even
25 started Lucasys; isn't that true?

1 MR. FAZIO: Objection to form.

2 THE WITNESS: From his experience -- he would have
3 learned that through his experience with PowerPlan and
4 PowerPlan's software.

5 BY MR. MAYES: (Resuming)

6 Q. And from RCC -- when he worked at RCC, correct?

7 A. Which would have been around PowerPlan software as
8 well.

9 Q. Okay. You're not saying that Vadim Lantukh's
10 understanding of the business requirements of PowerPlan's
11 customers is PowerPlan's confidential or proprietary
12 information, are you?

13 MR. FAZIO: Objection to form.

14 THE WITNESS: I did not say that, so --

15 BY MR. MAYES: (Resuming)

16 Q. Okay. Do you believe that?

17 A. The business requirements, I do not believe that
18 that's PowerPlan's intellectual property.

19 Q. Okay. And so if Vadim already knew those before he
20 started Lucasys, there wouldn't be any problem with him using
21 his knowledge of the business requirements to design software;
22 isn't that true?

23 MR. FAZIO: Objection to form and foundation.

24 THE WITNESS: Our concern has always been that the --
25 not the business requirements, but the method in which

1 PowerPlan has combined our database and our code to manage
2 those processes is the concern that we always had from an
3 intellectual property perspective.

4 BY MR. MAYES: (Resuming)

5 Q. You would agree with me that someone who understands
6 the business requirements around deferred tax calculations
7 would be able to develop software faster than someone who did
8 not previously understand those business requirements?

9 MR. FAZIO: Objection to form and foundation.

10 THE WITNESS: That would be potentially a fact. I
11 don't know -- I don't know if that's a definite statement,
12 but they would have an advantage if they knew.

13 BY MR. MAYES: (Resuming)

14 Q. Did PowerPlan always during the time you worked there
15 take the position that its database structure was proprietary
16 and confidential?

17 A. Yes.

18 Q. Did PowerPlan take the position that other software
19 could not interact and integrate with PowerPlan's database
20 model?

21 MR. FAZIO: Objection to form.

22 THE WITNESS: When you say other software, what do
23 you mean by that?

24 BY MR. MAYES: (Resuming)

25 Q. I mean, was it PowerPlan's position that it would be

1 a violation of PowerPlan's intellectual property for someone to
2 design software that could directly access PowerPlan's
3 database?

4 MR. FAZIO: Objection to form.

5 THE WITNESS: We have customers who would access our
6 database under their license agreement for various reasons
7 to publish data or other things to their other systems, so
8 PowerPlan is not a -- yeah, if there are other systems
9 that need to -- ERP systems, for instance, we would send
10 and receive data to those systems.

11 BY MR. MAYES: (Resuming)

12 Q. Okay. Would those other systems or the people
13 operating those other systems have access to PowerPlan's
14 database architecture and data model in order to do that?

15 MR. FAZIO: Objection to form and foundation.

16 THE WITNESS: If our customers provided it to them
17 under our license agreement and other their agreements
18 with those -- those people.

19 BY MR. MAYES: (Resuming)

20 Q. Do you know if PowerPlan ever told its customers that
21 PowerPlan was an open system that they could use other software
22 with if they wanted to?

23 A. How do you define open system?

24 Q. I'm asking, do you know if that -- those exact words,
25 "PowerPlan is an open system," were ever told to PowerPlan's

1 customers?

2 A. Not that I'm aware of, but --

3 (Plaintiff's Exhibit No. 202 was marked and identified.)

4 BY MR. MAYES: (Resuming)

5 Q. Mr. Dahlby, I'm handing you Exhibit 202. Take a look
6 at that. I'll represent to you this is a printout from the
7 Wayback Machine of PowerPlan's website from 2008. First, are
8 you familiar with the Wayback Machine?

9 A. I am not.

10 Q. Okay. I want you to turn to the second page of
11 Exhibit 202. I want you to read the last sentence on that
12 second page.

13 A. Which paragraph?

14 Q. The last -- the last paragraph, last sentence.

15 A. Okay. "As an open system, other reporting tools such
16 InfoMaker or Crystal Reports can be used."

17 Q. Do you know what InfoMaker and Crystal Reports are?

18 A. They're software-to-produce reports.

19 Q. Do you have any reason to dispute that this was
20 content on PowerPlan's website in 2008?

21 MR. FAZIO: Objection to form and foundation.

22 THE WITNESS: This appears to be PowerPlan's website.

23 It's our logo, so --

24 BY MR. MAYES: (Resuming)

25 Q. And InfoMaker and Crystal Reports are software

1 programs that could have been used -- or could be used to
2 directly access databases; is that correct?

3 A. That's my understanding.

4 Q. Okay. And this at least appears to be saying that
5 PowerPlan was an open system and customers were permitted to
6 use other software to access the PowerPlan database; isn't that
7 true?

8 MR. FAZIO: Objection to form and foundation.

9 THE WITNESS: Again, this would have been all under
10 the license agreements in place with each customer.

11 MR. MAYES: I saw Steve looking at his watch. It's
12 about 12:00. We've been going for another hour and
13 15 minutes. This probably is a good time to break for
14 lunch, I think.

15 VIDEOGRAPHER: Stand by.

16 (BREAK TAKEN)

17 VIDEOGRAPHER: Back on the record at 12:13 p.m.

18 BY MR. MAYES: (Resuming)

19 Q. All right. Mr. Dahlby, can you confirm that while we
20 were on break we did not have any substantive discussions about
21 the case?

22 A. No.

23 Q. All right. I'm handing you --

24 A. I can confirm that there were no substantive
25 discussions.

1 (Plaintiff's Exhibit No. 203 was marked and identified.)

2 BY MR. MAYES: (Resuming)

3 Q. All right. Thank you. I'm handing you Exhibit 203.
4 Here's a copy for your counsel. Take a look at this and tell
5 me if you've seen this before.

6 A. I have seen this.

7 Q. Okay. And you -- you received a copy of this letter
8 around the time it was sent?

9 A. I did.

10 Q. Okay. I just want to ask you on the last page of
11 Exhibit 203, there's a paragraph -- the third full paragraph
12 begins, "We agree with you that there is no need to drag out
13 the agreed process unnecessarily." Do you see that?

14 A. Yes, I see that.

15 Q. Okay. In the next paragraph -- or the next sentence
16 says, "Accordingly, PowerPlan hereby terminates the agreed
17 process effective immediately." Do you see that?

18 A. I see that, yes.

19 Q. Okay. So your understanding is that April 17th,
20 2020, is the date that the agreed process formally ended?

21 A. That's what I -- that's based on what this letter
22 says.

23 Q. Okay. At some point, did you learn shortly
24 thereafter that Lucasys was -- had been hired by
25 Algonquin/Liberty?

1 A. I did become aware of that, yes.

2 Q. Okay. How did you become aware of that?

3 A. I don't recall who shared that information, but it
4 was someone from the project team who shared that information.

5 Q. Okay. Was Jim Duffy on that project team?

6 A. He was the strategic account executive.

7 Q. Okay. I've seen references and e-mails to SAE. Is
8 that a reference to strategic account executive?

9 A. It is.

10 (Plaintiff's Exhibit No. 204 was marked and identified.)

11 BY MR. MAYES: (Resuming)

12 Q. Just to get the dates, I'm handing you Exhibit 204,
13 Mr. Dahlby. This appears to be an e-mail request from you to
14 Mr. Duffy. Do you see that?

15 A. Yes.

16 Q. Was this around the time when you learned that
17 Lucasys was at Algonquin/Liberty?

18 A. I believe that was the case, yes.

19 Q. Okay. What happened next with respect to Liberty?

20 A. I guess, what do you mean by what happened next?
21 That's like --

22 Q. Sure. Did PowerPlan take any action with respect to
23 Liberty as a result of learning that Lucasys was there?

24 A. My understanding was Jim Duffy did have a
25 conversation with Liberty around our intellectual property

1 concerns and the licensing obligations -- or the license
2 agreement that existed between PowerPlan and Algonquin/Liberty.

3 Q. Okay. Did he -- did he describe those discussions to
4 you?

5 A. Not that I recall in detail.

6 Q. Okay.

7 A. He may have sent a summary e-mail or something, but I
8 don't recall anything.

9 Q. Do you know if those -- the communication Mr. Duffy
10 had was shortly after this appointment?

11 A. I believe it to be shortly after that. I don't know
12 the --

13 Q. Okay.

14 A. -- specifics of when those happened.

15 Q. Do you know what actions Liberty took as a result of
16 that phone call?

17 MR. FAZIO: Objection to foundation.

18 THE WITNESS: My understanding is they no longer had
19 Lucasys engaged with the PowerPlan project team. I don't
20 know if they continued to employ Lucasys or not.

21 BY MR. MAYES: (Resuming)

22 Q. And did they ask PowerPlan to submit a scope of work
23 to replace what Lucasys had been doing?

24 A. I don't -- I recall having conversations on that
25 question, but I don't recall what exactly was requested by

1 Liberty.

2 (Plaintiff's Exhibit No. 205 was marked and identified.)

3 BY MR. MAYES: (Resuming)

4 Q. Mr. Dahlby, I'm handing you Exhibit 205 with a
5 courtesy copy for counsel. Take a look at that and tell me if
6 you've seen it before.

7 A. Yes, I would have seen this at the time.

8 Q. Okay. And you read these e-mails at the time you
9 received them?

10 A. I did.

11 Q. The first e-mail, which is on PowerPlan 200787, the
12 very last page of Exhibit 205, is an e-mail from Mr. Duffy to
13 Luisa Reed. Do you see that?

14 A. Yes.

15 Q. Do you believe that this e-mail was sent as a
16 follow-up to the conversation Mr. Duffy had with Ms. Reed?

17 A. It appears that that is the case, yes.

18 Q. Okay. It says, "In trying to help you come up with a
19 plan B, would you be willing to share with me the scope of work
20 from the SOW you signed with Lucasys?" Do you see that?

21 A. I do.

22 Q. When it says plan B, did you understand that to mean
23 a plan B to Lucasys?

24 MR. FAZIO: Objection to form.

25 THE WITNESS: Can you --

1 BY MR. MAYES: (Resuming)

2 Q. What did you understand this e-mail to mean when it
3 says, "In helping you come up with a plan B?"

4 A. It would be an alternative to including Lucasys in
5 meetings that would have had confidential information that we
6 weren't comfortable with them having access to.

7 Q. The next sentence says, "Something you wouldn't mind
8 me potentially forwarding to external third parties." Do you
9 see that?

10 A. Yes.

11 Q. Do you know, did anyone at PowerPlan forward this
12 opportunity to any external third parties?

13 A. I don't know if the e-mail was forwarded, but I know
14 we discussed other alternatives with third parties.

15 Q. Okay. Which third parties?

16 A. I believe we discussed it with Deloitte or we
17 discussed Deloitte as one option, and I believe we -- I don't
18 want to speculate something that I wasn't involved with.

19 Q. Okay. Did PowerPlan try to get this work?

20 MR. FAZIO: Objection to form.

21 THE WITNESS: I don't recall what happened after this
22 e-mail chain, if we ever provided a proposal or not.

23 (Plaintiff's Exhibit No. 206 was marked and identified.)

24 BY MR. MAYES: (Resuming)

25 Q. Mr. Dahlby, I'm handing you Exhibit 206 with a

1 courtesy copy for counsel. Take a look at that and tell me if
2 you've seen this.

3 A. I have seen this, yes.

4 Q. Okay. Does this refresh your recollection about
5 whether or not PowerPlan was going to attempt to provide the
6 tax resources that were no longer available from Lucasys?

7 A. Yes. It does appear we had proposed something to
8 them.

9 Q. Okay. And that was not successful; is that correct?

10 A. Based on this e-mail chain, that's what it appears to
11 show.

12 Q. Okay. Were you consulted by the members of the
13 business team about whether or not PowerPlan should push back
14 against Liberty using RCC as a vendor?

15 A. I don't recall a specific conversation like that.

16 Q. Did you discuss the matter with Jim Duffy to your
17 recollection?

18 A. I don't recall discussing specifically if we should
19 push back, as you phrased it, but --

20 Q. Okay. Ultimately, PowerPlan did not object to RCC
21 providing the services that Lucasys was previously going to
22 provide to Liberty; is that true?

23 A. That is correct.

24 Q. As far as you know, RCC did provide those services;
25 is that correct?

1 A. As far as I know.

2 (Plaintiff's Exhibit No. 207 was marked and identified.)

3 BY MR. MAYES: (Resuming)

4 Q. Mr. Dahlby, I'm handing you Exhibit 207 with a
5 courtesy copy for your counsel. Take a look at that and tell
6 me if you've seen that before.

7 A. I don't recall seeing this specific document.

8 Q. Okay. You're aware that Lucasys sued PowerPlan in
9 this case in the summer of 2020, correct?

10 A. Yes.

11 Q. Setting aside any conversations you had with counsel,
12 did you have discussions prior to that lawsuit being filed
13 about the possibility that Lucasys was going to sue PowerPlan?

14 A. Not -- not outside of discussions with counsel.

15 Q. Okay. Outside of conversations with counsel, did
16 anyone ever ask you to try and identify information that
17 PowerPlan contended was a trade secret that was already
18 publicly available?

19 A. Not outside of counsel.

20 Q. Okay. As far as you know, did anyone on the
21 management team aside from counsel ever ask PowerPlan
22 employees, hey, go find out what's available on the Internet?

23 MR. FAZIO: Objection to form.

24 THE WITNESS: I'm not aware.

25 BY MR. MAYES: (Resuming)

1 Q. Okay. So does that mean no; you're not aware that
2 anyone ever did that, correct?

3 A. I'm not aware that anyone did that.

4 Q. Okay.

5 A. Or I'm not aware of anyone requesting that action to
6 take place.

7 MR. MAYES: Okay. It's 12:30. Is this a good time
8 for lunch or do you want to keep going? I'm good to keep
9 going if you guys are.

10 THE WITNESS: I'm good.

11 MR. FAZIO: I'm good until 1:00.

12 MR. MAYES: All right. That's fine.

13 BY MR. MAYES: (Resuming)

14 Q. At some point, did PowerPlan commence what it called
15 an IP protection program with respect to Lucasys?

16 A. PowerPlan did have an IP protection program. I don't
17 recall what it was -- what it was called, but we did have that.

18 Q. Describe for me what you remember about what the IP
19 protection program was.

20 MR. FAZIO: Objection to form.

21 THE WITNESS: The program was kind of reminding our
22 customers through sending them letters around what our
23 agreements in place have stated was my recollection of the
24 key objective of the -- of the program.

25 BY MR. MAYES: (Resuming)

1 Q. Okay. Those communications specifically referenced
2 Lucasys; is that correct?

3 A. I don't recall if it specifically referenced Lucasys
4 or not.

5 (Plaintiff's Exhibit No. 208 was marked and identified.)

6 BY MR. MAYES: (Resuming)

7 Q. Okay. Mr. Dahlby, I'm handing you Exhibit 208 with a
8 courtesy copy for counsel. Take a look at that and tell me if
9 you've seen that before.

10 A. I have seen this.

11 Q. Okay. And this references in the subject line an IP
12 protection letter; is that correct?

13 A. It does.

14 Q. Do you believe that IP protection letter is -- are
15 the communications you were just referencing when you talked
16 about the IP protection program?

17 A. Yes.

18 Q. Okay. And this says, "I was thinking we should bring
19 up the letter that's going out during the exec stand-up to make
20 sure the team is all aware." Did I read that correctly?

21 A. Yes.

22 Q. What is the exec stand-up?

23 A. It's a meeting on Monday mornings with our executive
24 leadership team.

25 Q. Who are members of the executive leadership team who

1 participate in those meetings?

2 A. So it would have been our CEO, Joe Gomes, CFO Yost
3 Routon, Brett Burts, Marc Bortniker, Neal Tisdale, Suzanne
4 Ward, Sarah Park, and I believe that maybe Drea Terete would
5 have been in that at the time.

6 Q. Did you participate?

7 A. Yes.

8 Q. Okay. All those people were aware that these letters
9 were going out?

10 A. Yes.

11 (Plaintiff's Exhibit No. 209 was marked and identified.)

12 BY MR. MAYES: (Resuming)

13 Q. Mr. Dahlby, I'm handing you Exhibit 20 -- I'm sorry
14 -- 209. Have you seen this before?

15 A. I don't recall if I saw this one or not.

16 Q. Okay. This is the day after the e-mail we just
17 looked at in Exhibit 208; do you see that?

18 A. Yes.

19 Q. Do you believe that this is one of the letters that's
20 referred to in Exhibit 208?

21 A. I believe that those would have been potentially
22 different circumstances.

23 Q. So is that a -- that's a no; you don't believe this
24 is one of the letters?

25 A. I do not believe this was one of the -- the letters.

1 Q. Okay. Was -- this one was specific to Suez?

2 A. It was.

3 Q. And why -- why was that?

4 A. Based on specific information we had about Lucasys
5 being engaged and how they were being engaged was my
6 understanding.

7 Q. Okay. Because -- is that -- I just want to make sure
8 I'm not misunderstanding. You're saying it's because you knew
9 that Lucasys was doing work for Suez?

10 A. We were made aware of that, yes.

11 Q. Okay. Do you believe that the letters that went out
12 as part of the IP protection wave were significantly different
13 from this letter that went to Suez?

14 A. I don't recall. I have not reviewed those letters --

15 Q. Okay.

16 A. -- recently.

17 Q. This letter is specific to Lucasys; is that correct?

18 A. It does mention Lucasys in the letter, yes.

19 Q. Okay. Did PowerPlan -- was PowerPlan asked by Suez
20 to put together a statement of work for potentially replacing
21 Lucasys at Suez in response to this letter?

22 MR. FAZIO: Objection to foundation.

23 THE WITNESS: I know we prepared a proposal. I do
24 not know if we were asked to prepare a statement of work
25 or just a proposal.

1 BY MR. MAYES: (Resuming)

2 Q. Okay. Were you involved in that process?

3 A. I was made aware and I may have been included on some
4 calls, but I --

5 Q. Was there a phone call to reach out to Suez in
6 addition to this letter; do you know?

7 A. I was not involved in a phone call, but I understand
8 what -- what happened.

9 Q. Okay. You weren't on that call?

10 A. I was not.

11 (Plaintiff's Exhibit No. 210 was marked and identified.)

12 BY MR. MAYES: (Resuming)

13 Q. Okay. Mr. Dahlby, I'm handing you Exhibit 210. Take
14 a look at that and tell me if you've seen that before.

15 A. Yes, I've seen this.

16 Q. Okay. Does this refresh your recollection about
17 whether Suez requested a statement of work from PowerPlan in
18 response to the letter that we saw in Exhibit 209?

19 A. Yes. It references that an SOW was requested.

20 Q. Okay. And PowerPlan put one of those together; is
21 that correct?

22 A. I believe that's the case. Yes, we would have put an
23 SOW together in response to the customer requesting it. Yes.

24 Q. Your e-mail at the top of Page 1 of Exhibit 210 says,
25 "I'm expecting a lot smaller \$ given scenario and politics."

1 Do you see that?

2 A. Yes.

3 Q. What did you mean by the scenario and politics?

4 A. Just given the desire to maintain a positive
5 relationship with our customers.

6 Q. Was -- the scenario was broader than that, correct?
7 You had just asked them to fire Lucasys; isn't that true?

8 MR. FAZIO: Objection to form.

9 THE WITNESS: I don't believe we asked them to fire
10 Lucasys. I think we asked them to not provide them access
11 to our intellectual property.

12 BY MR. MAYES: (Resuming)

13 Q. You were aware at the time you made that ask that
14 Lucasys would not be able to do the kind of consulting work it
15 was doing any longer if that request was honored; isn't that
16 true, Mr. Dahlby?

17 A. Based on our understanding, there would have been
18 things they would not have been able to complete.

19 Q. Okay.

20 A. I believe that to be true.

21 Q. So you might not have expressly asked them to
22 terminate the relationship, but you understood at the time you
23 made this ask that if the request was honored, that would be
24 the end result; isn't that true?

25 MR. FAZIO: Objection to form.

1 THE WITNESS: Not the exact -- like, it wasn't saying
2 that they had to fire Lucasys was my understanding of what
3 the letter states, so --

4 BY MR. MAYES: (Resuming)

5 Q. It didn't say that, but you understood that if they
6 honored the request that would be the end result; isn't that
7 correct?

8 MR. FAZIO: Objection; asked and answered.

9 THE WITNESS: That would not be necessarily the end
10 result.

11 BY MR. MAYES: (Resuming)

12 Q. Okay. There would be at least some things that they
13 were doing that they would not -- no longer be able to do;
14 isn't that correct?

15 A. That would be a true statement.

16 Q. Okay. Did that play into your expectation that the
17 dollar amount would be a lot smaller as it says at the top of
18 Exhibit 210?

19 A. Did what play into the --

20 Q. Your understanding of the fact that Lucasys would no
21 longer be able to do work that it had been previously doing for
22 Suez and you were asking them to have that happen; is that the
23 scenario and politics you were referring to here?

24 MR. FAZIO: Objection to form; asked and answered.

25 MR. MAYES: You can answer.

1 THE WITNESS: So the scenario and politics that I was
2 referring to was the fact that we were telling the
3 customer they could no longer have consent to share that
4 information with Lucasys which would create a challenge
5 for the customer.

6 BY MR. MAYES: (Resuming)

7 Q. The IP protection program wave -- excuse me. Strike
8 that.

9 The IP protection program was carried out in waves;
10 is that true?

11 A. That's my recollection, yes.

12 Q. Okay. Why was it done that way?

13 A. Based on -- we like to do it based on waves in order
14 to -- from a resourcing perspective to make sure we were
15 aligning with the specific customers and the specific customer
16 -- what their contract says, for instance, and who would need
17 to be contacted and how they would be contacted.

18 Q. Did you have input into which customers were in which
19 waves?

20 A. I believe that, yes, I was involved in preparing
21 the --

22 Q. Which customers were in the first wave? What
23 criteria did you use to determine who was in the first wave?

24 MR. FAZIO: Objection to form.

25 THE WITNESS: I don't recall the exact criteria that

1 was defined. So I understand it was the -- the results
2 were our larger utility customers primarily.

3 BY MR. MAYES: (Resuming)

4 Q. Was there a reason you focused on larger customers
5 first?

6 MR. FAZIO: Objection to form.

7 THE WITNESS: The -- that's where we felt the IP
8 protection risk was highest and that we needed to inform
9 them first.

10 BY MR. MAYES: (Resuming)

11 Q. Did you at any point focus on customers that you knew
12 had had a previous relationship with Mr. Lantukh?

13 MR. FAZIO: Objection to form.

14 THE WITNESS: I don't recall if that was one of the
15 criteria or not.

16 BY MR. MAYES: (Resuming)

17 Q. As part of the IP protection program, did PowerPlan
18 reach back out to AEP?

19 A. I do not recall if they were included in that
20 program.

21 (Pleading's Exhibit No. 211 was marked and identified.)

22 BY MR. MAYES: (Resuming)

23 Q. Mr. Dahlby, I'm handing you Exhibit 211 with a
24 courtesy copy for counsel. Take a look at that and tell me if
25 you've seen this before.

1 A. I have seen this.

2 Q. Okay. Did you read this e-mail around the time it
3 was sent in June of 2020?

4 A. I did.

5 Q. Does this refresh your recollection as to whether or
6 not AEP was added to one of the waves of the IP protection
7 program?

8 A. The second e-mail here states that they were added to
9 a wave, yes.

10 (Plaintiff's Exhibit No. 212 was marked and identified.)

11 BY MR. MAYES: (Resuming)

12 Q. Okay. Mr. Dahlby, I'm handing you Exhibit 212 with a
13 courtesy copy for your counsel. Have you seen Exhibit 212
14 before?

15 A. I have not.

16 Q. Okay. You did not see a second letter to AEP?

17 A. I don't recall seeing that.

18 Q. Okay. Do you know if this is the form of the letters
19 that went out as part of the AEP protection wave?

20 MR. FAZIO: Objection to form and foundation.

21 MR. MAYES: I'm sorry. I'm sorry. Yes, I meant IP.

22 Thank you.

23 BY MR. MAYES: (Resuming)

24 Q. Do you know if this is the form of the letters that
25 went out as part of the IP protection wave?

1 MR. FAZIO: Objection.

2 THE WITNESS: I don't believe that this is the exact
3 form, but I --

4 BY MR. MAYES: ()Resuming)

5 Q. Okay. Were some customers excluded from the IP
6 protection program because they had migrated to the cloud
7 version of PowerPlan's software?

8 MR. FAZIO: Objection to form and foundation.

9 THE WITNESS: I don't recall if they were excluded or
10 not, so I don't -- I don't recall.

11 BY MR. MAYES: (Resuming)

12 Q. Okay. Were -- do you recall if customers who were on
13 the cloud version of PowerPlan's software were treated
14 differently for purposes of the IP protection program in any
15 way?

16 A. I don't recall.

17 (Plaintiff's Exhibit No. 213 was marked and identified.)

18 BY MR. MAYES: (Resuming)

19 Q. Mr. Dahlby, I'm handing you Exhibit 213. Take a look
20 at that and tell me if you've seen that before.

21 A. I have seen this.

22 Q. Okay. And so first, who is Joel McManus (ph)?

23 A. He was the senior manager of Manna (ph) Services.

24 Q. What was he -- strike that.

25 Did he have a role in the IP protection program?

1 A. My recollection is he was part of the team that was
2 executing the communications.

3 Q. So he says in his e-mail to you, "I saw a note Kevin
4 had made on Seminole that they are on -- they are cloud
5 deployment and don't need the IP protection phone call." Did I
6 read that correctly?

7 A. You did read that correctly.

8 Q. Why would a customer not need an IP protection phone
9 call if they were on the cloud deployment?

10 A. Specifically, the reason that that reduces our risk
11 from an IP protection perspective is because they would not
12 have our database or our code on their premise. I don't know
13 if we added them back to one of the waves or not, but the risk
14 would have been a different risk profile for those customers as
15 it relates to our IP.

16 Q. Okay. And the reason for that was because rather
17 than having the database hosted at the client site, the
18 database was hosted on PowerPlan-owned machines; is that
19 correct?

20 A. I would describe it as PowerPlan-managed because
21 they're --

22 Q. Sure.

23 A. We don't own the machines, but we were in control of
24 the servers where their software and their database resided.

25 Q. Did PowerPlan take the perspective -- the position --

1 excuse me.

2 Did PowerPlan take the position that third-party
3 consultants could not access the database for customers whose
4 data was stored on the cloud?

5 MR. FAZIO: Objection to form.

6 THE WITNESS: Can you repeat the question?

7 BY MR. MAYES: (Resuming)

8 Q. Yeah. Sure. Did PowerPlan take the position that
9 third-party consultants could not access customer databases
10 that were hosted in the cloud?

11 A. So the -- so direct access to the database; is that
12 the question you're asking?

13 Q. Yeah.

14 A. So without a program or a way for us to enable them
15 to have that access, it was not possible for them to have
16 direct access to the database.

17 Q. And that meant for customers who had historically
18 used third-party consultants to do things like data cleansing,
19 that was no longer possible for customers who had moved to the
20 cloud deployment; is that true?

21 A. I would not classify that as -- as true.

22 Q. Okay.

23 A. They could still hire third parties to provide data
24 cleansing services.

25 Q. They would need just an intermediary to extract the

1 data and give it to them before they could cleanse it?

2 A. The customer could extract the data from their
3 system, yes.

4 Q. Okay. Did that become a problem for any customers?

5 MR. FAZIO: Objection to form.

6 THE WITNESS: I guess, what do you mean did that
7 become a problem?

8 BY MR. MAYES: (Resuming)

9 Q. Sure. Did any customers object to not being able to
10 use third-party vendors as a result of their having deployed
11 the cloud version of PowerPlan's software?

12 A. We have had that occur, yes.

13 Q. Okay. I guess we can talk about that more because
14 it's (unintelligible).

15 Did PowerPlan complete the IP protection program in
16 the manner that it planned to?

17 MR. FAZIO: Objection to form and foundation.

18 THE WITNESS: I don't believe we completed that
19 program.

20 BY MR. MAYES: (Resuming)

21 Q. Okay. Why not?

22 A. My understanding, that was, I guess, conversation
23 where legal counsel recommended that we --

24 Q. Yeah, don't tell me what legal counsel recommended.
25 Was the program ceased once Lucasys sued PowerPlan?

1 A. I don't recall the timing of those two events.

2 Q. Do you know who Rob Kleczynski is?

3 A. I believe he is the VP of tax for Exelon, one of our
4 customers.

5 Q. Did you have any role ever supporting Exelon?

6 A. I've worked with Exelon at different times in my
7 career, yes.

8 Q. Did Mr. Burts ever consult you about potentially
9 reaching out to Exelon as part of the IP protection program?

10 A. I don't recall if there was any specific conversation
11 around Exelon with Mr. Burts.

12 Q. Okay. I think we saw a minute ago that some of the
13 IP protection communications included phone calls; is that
14 correct?

15 A. I believe that was part of the IP protection.

16 Q. Did you participate in any of those phone calls?

17 A. I don't recall participating in any of those phone
18 calls, no.

19 Q. Who did participate in those phone calls as far as
20 you know?

21 A. I don't recall.

22 Q. Do you recall PowerPlan communicating to any of its
23 customers that it was going to be conducting a third-party
24 audit of access to intellectual property by outside vendors?

25 A. I don't recall if that was ever communicated to

1 customers.

2 Q. Do you know if PowerPlan ever actually hired anyone
3 to do an audit of access to PowerPlan databases by outside
4 vendors?

5 A. I don't believe so.

6 Q. You're aware that PowerPlan filed a motion -- do you
7 know what a motion to dismiss is in a lawsuit?

8 A. I do.

9 Q. Okay. And you're aware that PowerPlan filed one of
10 those in this case?

11 A. I believe I was told that from our legal counsel.

12 Q. Did you ever see the judge's order on that motion to
13 dismiss?

14 A. I have not.

15 Q. Okay. Do you know approximately when the judge's
16 order came down?

17 A. I don't recall.

18 Q. Do you believe you learned near in time to when it
19 was decided by the judge that it had been decided?

20 A. I -- I don't recall.

21 MR. MAYES: Okay. Do you want to take a lunch break,
22 Steve?

23 MR. FAZIO: Yeah, I wouldn't mind taking --

24 MR. MAYES: All right. Let's go off the record.

25 VIDEOGRAPHER: Okay. Going off the record.

1 (BREAK TAKEN)

2 VIDEOGRAPHER: Okay. Go ahead.

3 BY MR. MAYES: (Resuming)

4 Q. All right. We're back on the record after lunch.

5 Mr. Dahlby, can you confirm that during the break we had no
6 substantive discussion about the case?

7 A. I can confirm.

8 Q. Mr. Dahlby, before the break we talked some about the
9 IP protection program that PowerPlan did in the summer of 2020;
10 do you recall that?

11 A. Yes.

12 Q. I'm handing you what was previously marked as
13 Exhibit 17. Take a look at that. Tell me if you've seen
14 something that looks like this before.

15 A. Yes, I would have seen this.

16 Q. Okay. Are these -- is this the form of the
17 communications that were sent out as part of the intellectual
18 property protection program?

19 A. Yeah. This appears to be the form -- the generic
20 form.

21 Q. So earlier, I asked you about a communication where
22 you were going to discuss the letter going out to customers in
23 the executive stand-up; do you recall that?

24 A. Yes.

25 Q. Is this the form of the letter you were referring to

1 in that -- in that exhibit?

2 A. I believe that's the case, yeah.

3 (Plaintiff's Exhibit No. 214 was marked and identified.)

4 BY MR. MAYES: (Resuming)

5 Q. Okay. Mr. Dahlby, I'm handing you Exhibit 214 with a
6 courtesy copy for counsel. And I'll represent to you this is
7 an excerpt from the privilege log we were provided by
8 PowerPlan's counsel, and it's got a couple of e-mails from you
9 here identified. Do you see that?

10 A. Yes, I see that.

11 Q. Okay. And I'm not going to ask you about the
12 substance of your communications back and forth with
13 Mr. Suture, but the first e-mail that's listed there on 10/5/20
14 with a 1:10 timestamp says, "Re: Trade secrets identification
15 kickoff." Do you see that?

16 A. Yes.

17 Q. Do you recall having conversations that did involve
18 Mr. Suture or counsel for PowerPlan at this time involving a
19 trade secrets identification kickoff?

20 A. I do not.

21 Q. Okay. Do you know what -- I did not see an e-mail
22 that didn't have the Re: on the privilege log. Do you know,
23 was there an original e-mail that was with the subject line of
24 trade secrets identification kickoff?

25 A. I don't recall.

1 Q. Okay. Were there meetings not involving counsel
2 around this time period where PowerPlan employees or executive
3 were trying to identify PowerPlan's trade secrets?

4 A. Not that I'm aware.

5 (Plaintiff's Exhibit No. 215 was marked and identified.)

6 BY MR. MAYES: (Resuming)

7 Q. Okay. Mr. Dahlby, I'm handing you Exhibit 215. Take
8 a look at that and tell me if you've seen that before.

9 A. I don't recall seeing this.

10 Q. Okay. Do you recall reviewing PowerPlan's responses
11 to Lucasys' interrogatories at any point?

12 A. I do.

13 Q. Do you recall if those interrogatories made reference
14 to the counterclaim filed by PowerPlan in the case?

15 A. I don't recall if there was a specific reference to
16 that.

17 (Plaintiff's Exhibit No. 216 was marked and identified.)

18 BY MR. MAYES: (Resuming)

19 Q. Okay. I'm handing you Exhibit 216. Take a look at
20 Exhibit 216, and tell me if you have seen Exhibit 216 before.

21 A. I have.

22 (Plaintiff's Exhibit No. 217 was marked and identified.)

23 BY MR. MAYES: (Resuming)

24 Q. And did you -- I'm handing you Exhibit 217 along with
25 a courtesy copy for counsel. Is that your signature on the

1 bottom of 217?

2 A. Yes, it is.

3 Q. And that's verifying to the best of your knowledge
4 that the answers in Exhibit 216 are accurate, the factual
5 information; is that correct?

6 A. Yes.

7 Q. Okay. And did you similarly verify the answers to a
8 second set of interrogatories; do you recall? I might as well
9 just give them to you so you don't have to stress your memory.

10 A. I do recall there being a second set of
11 interrogatories.

12 (Plaintiff's Exhibits No. 218 and 219 were marked and
13 identified.)

14 BY MR. MAYES: (Resuming)

15 Q. Mr. Dahlby, I'm handing you Exhibit 218 along with a
16 courtesy copy for counsel, and 219 as well.

17 MR. FAZIO: (Unintelligible response).

18 MR. MAYES: Oh, does it? Well, I had two files in
19 the e-mail (unintelligible), so I guess we can scrap --
20 well, it's already marked, so here's 219.

21 BY MR. MAYES: (Resuming)

22 Q. Mr. Dahlby, is that your signature on the last page
23 of Exhibit 218?

24 A. Yes. Yes, sir.

25 Q. Okay. Thank you. All right. So I know you've got a

1 lot of documents in front of you right now. I want you to look
2 back at Exhibit 215 first. And I'm going to ask you to turn
3 to the counterclaim portion of Exhibit 215, which begins on
4 Page 21. And you'll see that numbering of the paragraphs
5 begins again on Page 21 with the counterclaims. Are you with
6 me?

7 A. Yep.

8 MR. FAZIO: Page 22?

9 MR. MAYES: Yeah.

10 BY MR. MAYES: (Resuming)

11 Q. I want you to look at paragraph number 19 of the
12 counterclaim, which is on Page 27 of Exhibit 215. Are you with
13 me?

14 A. Yes.

15 Q. Okay. Go ahead and read that to yourself and tell me
16 when you're done.

17 A. Okay.

18 Q. Are you aware of any other efforts that PowerPlan
19 takes to maintain the secrecy of its confidential or
20 proprietary information and trade secrets other than the things
21 that are listed here in paragraph 19?

22 A. I'm sure there are others, but I can't think of
23 anything immediately that comes to mind.

24 Q. Okay. So as you sit here today, you cannot think of
25 any other efforts other than the ones that are set forth in

1 paragraph 19?

2 A. Yes.

3 Q. Okay. If you turn back to paragraph five, which is
4 on Page 23 of Exhibit 215, go ahead and read that paragraph to
5 yourself and let me know when you're done.

6 A. Okay.

7 Q. Okay. As you sit here today, are you aware of any
8 evidence that anyone at Lucasys misappropriated the items that
9 are listed here beginning with, "Including but not limited to?"

10 MR. FAZIO: Again, he's not asking you for anything
11 that you've learned through counsel. With that, go ahead
12 and answer.

13 THE WITNESS: Can you repeat the question to make
14 sure I heard it right?

15 BY MR. MAYES: (Resuming)

16 Q. Sure. Yeah. As you sit here today, are you aware of
17 any facts or evidence showing that Lucasys misappropriated any
18 of the items that are listed in paragraph five after,
19 "Including but not limited to?"

20 A. I have not been presented that -- any direct
21 evidence.

22 Q. If you look at Exhibit 216, which is the first set of
23 interrogatories, I want you to turn to interrogatory response
24 number eight, which is on Page 7 of Exhibit 216. Go ahead and
25 read the response and let me know when you're finished.

1 A. Okay. I've read it.

2 Q. Okay. At the time you verified the accuracy of these
3 interrogatory responses, what facts or evidence supported the
4 response that Lucasys had misappropriated -- the things that
5 Lucasys had misappropriated included with the list that
6 follows?

7 MR. FAZIO: Objection to form.

8 THE WITNESS: Can you repeat the question, please?

9 BY MR. MAYES: (Resuming)

10 Q. Sure. Yeah. So the -- in the response here,
11 there's, "Without waiving its objections, PowerPlan states that
12 the trade secrets, confidential information, proprietary
13 information, and protected information set forth in the
14 October 30, 2019 letter that PowerPlan contends Lucasys has
15 misappropriated include," and then there is a list. Do you see
16 that?

17 A. I see that.

18 Q. Okay. And my question is, what facts or evidence
19 support this response that Lucasys had misappropriated the
20 things that are listed there at the time you verified these
21 interrogatory responses?

22 A. I guess that would have been conversations I was
23 having with legal counsel around that.

24 Q. I don't want you to tell me your conversations with
25 legal counsel. But this is with respect to the facts that are

1 -- what facts or evidence were you aware of, setting aside
2 anything you had exclusively heard through counsel, that
3 supported this statement that Lucasys had misappropriated the
4 things listed after the word "include" in that interrogatory
5 response?

6 A. What -- how would we classify the information learned
7 through the agreed process?

8 Q. Was that the basis on which you verified this
9 response?

10 MR. FAZIO: Objection to form and foundation.

11 THE WITNESS: I guess that was a question I was
12 asking. Is that --

13 MR. MAYES: If you need to discuss with Mr. Fazio
14 whether you're permitted to -- to give an answer based on
15 things you learned during the agreed process, we can take
16 a short break.

17 THE WITNESS: We can take a break.

18 VIDEOGRAPHER: Okay. Stand by. Going off the
19 record.

20 (BREAK TAKEN)

21 VIDEOGRAPHER: Back on the record at 2:14 p.m.

22 BY MR. MAYES: (Resuming)

23 Q. Okay. Mr. Dahlby, can you confirm that you and I did
24 not have any substantive discussions about the case during the
25 break?

1 A. Yes.

2 Q. So my question was, what facts or evidence did you
3 have at the time you verified this interrogatory response that
4 Lucasys had misappropriated the items after the word "include"
5 in response number eight?

6 A. So those items would have been part of the agreed
7 process with legal counsel.

8 Q. So specifically, was there -- so items you received
9 or reviewed during the agreed process were the basis for this
10 response; is that correct?

11 MR. FAZIO: Objection. I don't want to have a
12 speaking objection, but I think I need to clarify what
13 you're asking here.

14 MR. MAYES: Okay. Yeah.

15 BY MR. MAYES: (Resuming)

16 Q. My question is, the factual -- all of the factual
17 basis for this response number eight is information you learned
18 as part of the agreed process; is that true?

19 MR. FAZIO: Objection. Objection to form.

20 MR. MAYES: You can answer if you understand the
21 question.

22 THE WITNESS: Yeah, that -- to my knowledge, yes,
23 that's the only thing I can recall would have been that
24 information.

25 BY MR. MAYES: (Resuming)

1 Q. Okay. If you could turn to interrogatory
2 response 11, which is on Page 12 of Exhibit 216, go ahead and
3 read the interrogatory and the response and let me know when
4 you're finished.

5 A. Okay. I've read it.

6 Q. Okay. At the time before you verified -- or before
7 you verified this response number 11, had you searched
8 PowerPlan's website to see what information was available on
9 PowerPlan's website?

10 A. I have not done a -- I clicked through our website to
11 see what's available, but I have not done a search of our
12 website.

13 Q. Did you do a Google search to see what was available
14 like through the Internet before verifying this response?

15 A. I did not.

16 Q. Did you ever go on any public source code
17 repositories to see what was available?

18 A. I did not.

19 Q. Do you now know that, in fact, information that
20 PowerPlan contended was a trade secret was available on
21 PowerPlan's website?

22 MR. FAZIO: Objection to form and foundation.

23 THE WITNESS: The -- I guess I'm not a legal expert
24 to decide what a trade secret is. I do believe with the
25 second exhibit we're looking at, there was information

1 that we would consider confidential that was available.

2 BY MR. MAYES: (Resuming)

3 Q. Okay. We can talk about that when we get to the
4 second set of interrogatory responses. At some point, did you
5 become aware that the counterclaim that PowerPlan had filed in
6 this case was dismissed by the judge?

7 A. I was provided updates from our legal counsel.

8 Q. Did you understand why the counterclaim was
9 dismissed?

10 A. I do not, no.

11 Q. Okay. If you can look back at Exhibit 215, which is
12 the counterclaim, and I want you to turn to paragraphs 53
13 through 55 of the counterclaim, which are on Pages 36 and 37 of
14 Exhibit 215.

15 A. What paragraphs did you say?

16 Q. Fifty-three through 55.

17 A. Okay. I've read those paragraphs.

18 Q. Okay. As you sit here today, are you aware of any
19 facts or evidence that Lucasys, in fact -- strike that.

20 Look at paragraph 55.

21 A. Okay.

22 Q. As you sit here today, are you aware of any
23 information -- facts or evidence that support the allegation
24 that Lucasys used PowerPlan's protected information including
25 but not limited to that list of things to design, develop, and

1 implement Lucasys' software?

2 MR. FAZIO: You can answer that to the extent it does
3 not include information you learned from counsel.

4 THE WITNESS: I'm not aware of any public information
5 that would pertain to that.

6 BY MR. MAYES: (Resuming)

7 Q. Okay. My question is a little different, which is as
8 you sit here today, are you aware of any facts or evidence,
9 setting aside what you might have learned from counsel, that
10 shows Lucasys, in fact, used PowerPlan's protected information
11 to design, develop, and implement its software?

12 A. I'm not aware. I have not seen that information.

13 Q. Okay. Are you aware that the judge in the case gave
14 PowerPlan an opportunity to amend this counterclaim after it
15 was dismissed?

16 A. I believe I may have heard that, but I don't --

17 Q. Okay. Are you aware that the judge at some point
18 ordered PowerPlan to identify the trade secrets at issue in the
19 case with particularity?

20 A. I guess I was at the request of counsel involved in
21 answering those questions. I don't know (unintelligible).

22 Q. Okay. And my question is just kind of simply, are
23 you aware that that was something that PowerPlan was ordered to
24 do?

25 A. Yes.

1 (Plaintiff's Exhibit No. 220 was marked and identified.)

2 BY MR. MAYES: (Resuming)

3 Q. Okay. I'm handing you Exhibit 220. Have you seen
4 this document before?

5 A. I have not seen this document.

6 Q. Okay. So I guess the answer is that you did not put
7 this together; this is not your work product?

8 A. I have not seen this document.

9 Q. Okay.

10 A. The -- yes, not this document. I guess that's the
11 question, right?

12 Q. Fair enough. If you flip to Page 6, there is
13 something that begins Exhibit A. Have you seen the document
14 starting at Page 6 going further back to Page 53?

15 A. I have seen this -- some of this content. I don't --
16 don't know if I've seen all of it.

17 Q. Did you draft this?

18 A. I did not draft this.

19 Q. Prior to this document that we see here that begins
20 on Page 6 of Exhibit 220, are you aware of any similar list
21 that existed at PowerPlan at any point during your tenure
22 there?

23 A. I'm not aware.

24 Q. I want you to look at paragraph 174 on Page 25 of
25 this. Strike that.

1 What's your understanding of what this document is?

2 What are these items that are listed in paragraphs one through
3 411?

4 A. My understanding is these are key pieces of our
5 intellectual property documented at the request of legal -- a
6 legal request.

7 Q. If you look at paragraph 174 on Page 25, do you
8 understand that PowerPlan was contending that storing any
9 number of income tax rates for federal and various state
10 jurisdictions was a piece of PowerPlan's intellectual property?

11 MR. FAZIO: Objection to form.

12 THE WITNESS: I guess, can you repeat the question to
13 make sure I understand what you're asking there?

14 BY MR. MAYES: (Resuming)

15 Q. Sure. Yeah. You just said, I think, that these
16 items in paragraphs one through 411 were key pieces of
17 PowerPlan's intellectual property. Did I understand that
18 correctly?

19 A. Yes. You understood that correctly.

20 Q. Okay. And so I'm asking you about a specific one of
21 those, which is number 174, which says, "Storing any number of
22 income tax rates for federal and various state jurisdictions."
23 Is that a piece of PowerPlan's intellectual property?

24 A. I mean, I think in the context of the various points
25 that all kind of fit together, it's not that we store rates.

1 It's how we store the rates is -- was the -- is what's being
2 described here.

3 Q. Isn't it true that any tax software would need to
4 store tax rates?

5 MR. FAZIO: Objection to form.

6 THE WITNESS: Can you repeat the question to make
7 sure I understand?

8 BY MR. MAYES: (Resuming)

9 Q. Yeah. Wouldn't any tax software -- any tax
10 calculation software need to store tax rates?

11 A. Any tax software would have to decide how to
12 structure that information and how to organize that information
13 in a way that it efficiently works with the rest of -- in an
14 end piece of software.

15 Q. Okay. So if I understand right, each one of these
16 numbered bulletpoints is not by itself a piece of PowerPlan
17 intellectual property; is that correct?

18 MR. FAZIO: Objection to form.

19 THE WITNESS: I guess I don't believe I can -- I'm
20 not a legal expert on how you would define that.

21 BY MR. MAYES: (Resuming)

22 Q. Okay. Has PowerPlan made any effort as far as you're
23 aware of to revise this list in light of the information that
24 Lucasys was able to find publicly through the Internet?

25 MR. FAZIO: Objection to form.

1 THE WITNESS: We have not.

2 BY MR. MAYES: (Resuming)

3 Q. Okay. Have you made any communications to customers
4 letting them know that things that previously might have been
5 considered intellectual property were no longer considered
6 intellectual property?

7 MR. FAZIO: Objection to form and foundation.

8 THE WITNESS: I guess I'm not sure what you're
9 referring to.

10 BY MR. MAYES: (Resuming)

11 Q. Well, you understand that when something is publicly
12 available on the Internet, it can't be claimed as a trade
13 secret, correct?

14 MR. FAZIO: Objection to form.

15 THE WITNESS: I guess I'm not an expert to define
16 whether or not that's still our intellectual property,
17 so --

18 BY MR. MAYES: (Resuming)

19 Q. Okay. And I guess as far as you know, has PowerPlan
20 in any way publicly changed its position about what constitutes
21 its intellectual property in response to the information that
22 Lucasys found to be publicly available on the Internet?

23 A. No.

24 Q. Okay. I guess I've talked about it. Why don't we
25 look at Exhibit 218? This is the second set of interrogatory

1 responses, and I want you to look at interrogatory number 19 of
2 Exhibit 218, which doesn't have page numbers, but it's -- the
3 third page is where it starts. Go ahead and read the
4 interrogatory and the response. Let me know when you're done.

5 A. You said 19? Interrogatory 19, you said?

6 Q. Yes.

7 A. Okay.

8 Q. Please let me know when you're finished reading the
9 response to interrogatory 19. Are you ready?

10 A. Yep.

11 Q. Okay. In response to -- or while you were preparing
12 to verify this response to interrogatory 19, did you review the
13 information Bates labeled Persons or Websites 001 through
14 002891?

15 A. I did.

16 Q. Okay. And this interrogatory response refers to an
17 Exhibit A. Tell me what steps you took to verify the
18 information presented in Exhibit A.

19 A. Reviewing the documents and --

20 Q. Okay. So there's a column here on Exhibit A that
21 says, "Earliest possible date available on website or phone
22 application." Do you see that?

23 A. Yes.

24 Q. Where did the information that was used to fill in
25 that column come from?

1 A. I was told that that was based on our -- like the
2 timestamps on the files.

3 Q. Okay. So who told you that?

4 A. The legal counsel.

5 Q. Okay. You didn't -- did you do anything
6 independently to verify that these dates that are shown here
7 were accurate?

8 A. I did not.

9 Q. Okay. As far as you know, are they accurate?

10 A. They -- I looked over them. They all looked
11 reasonable, so I did not verify them individually.

12 Q. Okay. I want you to look at interrogatory number 18,
13 which is on -- it starts on the second page, and the answer to
14 that interrogatory.

15 A. Okay.

16 Q. Okay. You understood this interrogatory number 18 to
17 be referring to the Exhibit A to Exhibit 220 that we looked at
18 a minute ago, correct, the -- the numbered list from one to
19 411?

20 A. I did not understand those two things to be
21 connected.

22 Q. Okay. Did you think there was another list of trade
23 secrets provided by PowerPlan on April 29th, 2022, when you
24 read and verified the accuracy of the response to interrogatory
25 number 18?

1 A. The -- well, let me ask -- clarify. So I had not
2 seen the document that we talked about, so I guess I understood
3 that there was a list of trade secrets provided based on the
4 information from counsel.

5 Q. Okay. And I guess my question is, when you read this
6 interrogatory and then verified the accuracy of the response,
7 if you hadn't seen this, what did you think it was referring to
8 when it said the list of trade secrets provided by PowerPlan on
9 April 29th, 2022?

10 MR. FAZIO: Objection to form.

11 THE WITNESS: I was aware based on information from
12 counsel that we had provided a list. I had not seen the
13 list, but based on the answer, we weren't specifying any
14 specific list based on the information provided from
15 counsel.

16 BY MR. MAYES: (Resuming)

17 Q. Okay. So as of the date of -- that these were
18 verified, there was not a single one of the items from the list
19 of trade secrets that PowerPlan was contending that Lucasys had
20 misappropriated; is that correct?

21 MR. FAZIO: Objection to form and foundation.

22 THE WITNESS: That is not what the answer says.

23 BY MR. MAYES: (Resuming)

24 Q. Okay. PowerPlan could not on this date identify any
25 specific item from that list; isn't that true?

1 MR. FAZIO: Objection to form.

2 THE WITNESS: Excuse me?

3 BY MR. MAYES: (Resuming)

4 Q. Okay. As of the date you verified the response to
5 interrogatory number 18, isn't it true that PowerPlan could not
6 identify a specific item from the list of trade secrets that
7 Lucasys had misappropriated?

8 MR. FAZIO: Objection to form.

9 THE WITNESS: As the answer states, it's premature as
10 discovery in this case is ongoing. So that was what I was
11 verifying; that -- the statement here that says it's
12 premature; discovery in the case is ongoing.

13 BY MR. MAYES: (Resuming)

14 Q. Okay. And the answer does not, in fact, identify a
15 single item from the list, correct?

16 A. The answer does not identify any item from the list.

17 Q. As you sit here today, can you identify a specific
18 item from the list that you contend -- or PowerPlan contends
19 Lucasys misappropriated?

20 MR. FAZIO: Objection to form and foundation.

21 THE WITNESS: I have not been -- I have not seen any
22 of the production that would have allowed that analysis to
23 be done.

24 BY MR. MAYES: (Resuming)

25 Q. Okay. So you personally as you sit here have not

1 received any new information since the time you verified this
2 interrogatory response that would allow you to give a different
3 more specific answer; is that true?

4 A. That is true.

5 Q. I want to look again at the response to interrogatory
6 number 19. Let me know when you're -- when you're there.

7 A. Okay.

8 Q. The first sentence of the paragraph -- the second
9 paragraph, the response that begins, "With respect to Persons
10 or Websites 1 through 2891." Do you see that sentence?

11 A. Yes.

12 Q. Okay. This says, "The materials were uploaded to the
13 PowerPlan website and/or Cvent phone application by PowerPlan's
14 marketing department following approval by the respective
15 content owner." Did I read that correctly?

16 A. Yes.

17 Q. Who are the respective content owners who approved
18 the posting of those materials?

19 A. That would have been the head of the marketing
20 department.

21 Q. And who was that at the time these items were posted?

22 A. Drea Terete.

23 Q. So it's your understanding that Ms. Terete approved
24 the posting of all of the information that Mr. Persinger (ph)
25 attached to his declaration with the Bates labels referred to

1 in that sentence?

2 A. I was not involved to know the exact order, but
3 that's who would have been involved.

4 Q. Okay. Did you talk to Ms. Terete in connection with
5 your verification of this interrogatory answer?

6 A. I did not.

7 Q. Well, how do you know that that's true; that
8 sentence?

9 A. Because that would be -- that's my understanding from
10 the people in the marketing department.

11 Q. Okay. So you talked to somebody else in the
12 marketing department when you were --

13 A. Yes.

14 Q. -- working on this response?

15 A. Yes.

16 Q. Who did you talk with?

17 A. I believe it was Joyce Smith.

18 Q. Was she the one who actually posted the material?

19 A. I don't recall if she was or was not, so --

20 Q. Okay.

21 A. It could have been. The department is a group of
22 people. I don't know who actually posted it.

23 Q. Skipping to the next sentence which talks about
24 Exhibit A, and going on to the sentence after that, it says,
25 "PowerPlan does not have any formal policies or training

1 specifically related to the upload of materials to the
2 PowerPlan website and/or Cvent phone application." Did I read
3 that correctly?

4 A. You did.

5 Q. Has that changed since this interrogatory answer was
6 verified?

7 A. So the -- yes, that has changed, so I guess so. I
8 don't know if it's specific to the policies around where we
9 uploaded that content, so this content was uploaded into like a
10 hidden area of our website is my understanding. I'm not
11 technical in how the -- the website works, but that's my
12 understanding is it was like a hidden area of the website that
13 wasn't accessible from the main homepage of the website. And
14 so we've made sure that we're posting that content into a
15 customer portal that's password-protected or, you know,
16 specific to those registrations.

17 Q. Have you taken steps to add additional security to
18 the app?

19 MR. FAZIO: Objection to form.

20 THE WITNESS: I'm not familiar with additional
21 security of the app. I do know that the -- like, the most
22 recent events that the information was only available to
23 the registered attendees.

24 BY MR. MAYES: (Resuming)

25 Q. As far as you know prior to the posting of the

1 materials Bates labeled Persinger Website 1 through 2891 and
2 Persinger App 2892 through 871, had Ms. Terete received
3 specific training about what constituted PowerPlan's trade
4 secrets?

5 A. I mean, she would have received similar training in
6 -- that we talked about in the earlier responses, and the
7 employee handbook and so forth.

8 Q. So you looked through those materials. Some of those
9 materials had confidential and proprietary legends across the
10 bottom; isn't that correct?

11 A. They did.

12 Q. Should those materials have been posted to the
13 PowerPlan website where they were accessible?

14 A. They should not have been. I think the fact that
15 they were in a hidden area was -- I believe that was a
16 technique to provide security on those -- a level of security
17 on those documents.

18 Q. Okay. Turn to the next page of Exhibit 218. There
19 is a response about Persinger GitHub 9089 through 9423. Do you
20 see that?

21 A. Yes.

22 Q. Okay. The first sentence says PowerPlan did not
23 upload the information found at those Bates labels; is that
24 correct?

25 A. Yes.

1 Q. Is that accurate?

2 A. Yes.

3 Q. Okay. Skip the next sentence and read the sentence
4 below that. It says, "All folders within a PowerPlan-owned
5 GitHub account are private. However, there was a brief period
6 where one or more folders in its GitHub account were made
7 accessible to the public." Did I read that correctly?

8 A. Yes.

9 Q. Okay. When was that brief period?

10 A. In the last -- I don't know the exact dates of those
11 dates, but they are no longer public.

12 Q. Okay. How long were they public?

13 A. I don't recall the specifics for each of those
14 different files, so --

15 Q. Okay. How about for just -- so only some folders in
16 PowerPlan's GitHub account were made accessible to the public;
17 is that correct?

18 A. That's accurate.

19 Q. Okay.

20 A. A very limited amount of folders.

21 Q. Where did you get that information from; the
22 information that some -- one or more folders were made
23 accessible to the public?

24 A. After receiving those exhibits from the Persinger,
25 identify and speaking to the team that was involved with those

1 -- those particular files.

2 Q. Is that Chris Shoon (ph) and Dan Modder (ph) as
3 referred to in the next sentence?

4 A. Yes.

5 Q. So you spoke with Mr. Shoon and Mr. Modder?

6 A. I spoke with Mr. Tisdale who spoke with them.

7 Q. Okay. And the next sentence says, "Chris Shoon,
8 Daniel Modder, and/or other individuals may have edited,
9 relocated, and/or duplicated information from a temporarily
10 public folder on a PowerPlan-owned GitHub account to
11 personally-owned GitHub accounts in approximately 2020 as
12 reflected in Persinger GitHub 009088." Did I read that
13 correctly?

14 A. You read that correctly.

15 Q. Okay. At the time they did that, Mr. Shoon and
16 Mr. Modder were PowerPlan employees; is that correct?

17 A. They were.

18 Q. Okay. And at the time they did that, the folders
19 that they edited, relocated, and/or duplicated were publicly
20 available; is that true?

21 A. That's my understanding, yes.

22 Q. Okay. And do you know at what point those folders
23 that they edited, relocated, and/or duplicated were changed
24 from being public to being private?

25 A. After this, they were -- we were made aware of that.

1 Q. So they were made private in 2022?

2 A. Yes.

3 Q. Okay. So from 2020 until 2022, all of the
4 information in those folders was publicly available to people
5 on the Internet?

6 A. That's -- yes.

7 Q. Okay. The next sentence says, "PowerPlan does not
8 have any formal policies or training related to the use of a
9 PowerPlan-owned GitHub account." That's -- that was accurate
10 as of the time that this interrogatory response was verified,
11 correct?

12 A. Yes.

13 Q. And is that still true today?

14 A. To my knowledge, yes.

15 Q. Okay. So by copying or -- strike that.

16 By editing, relocating, and/or duplicating
17 information from a public PowerPlan-owned GitHub to
18 personally-owned GitHub accounts, did Mr. Shoon or Mr. Modder
19 violate any policies of PowerPlan?

20 MR. FAZIO: Objection to form.

21 THE WITNESS: The -- can you repeat the question?

22 BY MR. MAYES: (Resuming)

23 Q. Yeah. So in 2020 -- approximately 2020, Mr. Shoon
24 and Mr. Modder edited, relocated, and/or duplicated information
25 from a temporarily public folder to personally-owned GitHub

1 accounts, correct?

2 A. Yes.

3 Q. My question is, did that violate any PowerPlan
4 policies?

5 A. Yes.

6 Q. Okay.

7 A. I mean, I guess I don't know about policies. I would
8 say our standard operating process.

9 Q. Is there something they could have looked at back in
10 2020 that would have said don't do this; don't make a copy of a
11 PowerPlan GitHub repository?

12 A. It would have been in the standard training that's
13 mentioned where we talked about protecting, you know,
14 intellectual property.

15 Q. Okay. That -- if I understand the next sentence
16 correctly, that training doesn't actually refer to GitHub at
17 all, does it?

18 A. Not specifically GitHub.

19 Q. Okay. So they would have had to read that and
20 interpret it to mean we can't copy this -- these GitHub
21 repositories; is that correct?

22 A. I guess when they were made aware that these were
23 available, they were surprised because they knew that was not
24 what was supposed to happen. So they were aware that that was
25 not copies -- that they should not be available, and that's

1 when they mentioned that they weren't sure how those were
2 duplicated and it was not done in an intentional manner.

3 Q. Okay. So was it -- your understanding, then, was
4 that they had just copied the PowerPlan ones which should have
5 been private but weren't, and they didn't realize it at the
6 time they did it?

7 A. And it was a single small one. I believe it was a
8 prototype. It wasn't, you know, anything -- it wasn't the
9 entire library of PowerPlan source code. It was a very
10 specific small piece of information.

11 Q. It did, in fact, include almost all of the table
12 information for PowerTax, though; isn't that true?

13 MR. FAZIO: Objection to form and foundation.

14 THE WITNESS: I don't believe it had the list of
15 PowerTax tables, no. I believe it had a list of tax
16 reporting elements is my understanding. It did not
17 necessarily -- I don't know if it had a list of tables in
18 detail, but -- I didn't see that when I looked through the
19 information.

20 BY MR. MAYES: (Resuming)

21 Q. Okay. Are you sure about that; that it did not
22 contain a list of PowerTax tables?

23 MR. FAZIO: Objection to form.

24 THE WITNESS: I'd have to go back and review it in
25 detail to see if there was. I mean, I know it had

1 PowerTax information that did not have -- but I'm not
2 aware if it had the entire set of PowerTax tables.

3 BY MR. MAYES: (Resuming)

4 Q. Okay. Most of the materials that were uploaded to
5 the website were uploaded prior to 2019, correct?

6 A. Yes.

7 Q. Okay. So they were available from whenever they were
8 uploaded through at least 2022, correct?

9 A. That is correct.

10 Q. Was any -- were any employees disciplined as a result
11 of any of the materials that were publicly available as
12 referred to in interrogatory response number 19?

13 A. How do you define disciplined?

14 Q. How would you define disciplined?

15 A. I think there was communication to the people that
16 were involved that this is not in line with our policies, so --

17 Q. Were they like formal reprimands in their HR files?

18 A. I do not have any idea.

19 Q. Okay. Were any of them fired as a result?

20 A. Not that I'm aware.

21 Q. Okay. Or any -- was anyone demoted as a result of
22 this as far as you know?

23 A. Not that I'm aware.

24 Q. Since the time of the IP protection program, are you
25 aware of PowerPlan losing any services opportunities to

1 Lucasys?

2 A. I'm -- yes.

3 Q. Okay. What ones?

4 A. I don't know all of them, but I understand that
5 they've done work at Suez.

6 Q. Any others?

7 A. I'm not aware of any others.

8 Q. Are you aware of any PowerPlan customers --

9 A. Actually, I am aware that they've done work for Con
10 Edison.

11 Q. Any others?

12 A. Not that come to mind.

13 Q. Okay. Do you know if Lucasys had done work for Con
14 Ed and Suez before the IP protection program?

15 A. I -- I don't know.

16 Q. Okay. I think you said before you knew Suez had
17 retained Lucasys and that's one of the reasons why they got a
18 different letter; is that correct?

19 A. Yes.

20 Q. And you're just not sure about Con Ed?

21 A. Well, I understand Con Ed recently had told us they
22 were doing work with Lucasys.

23 Q. Okay.

24 A. So I don't know the timing specific to that.

25 Q. Okay. Are you aware of any -- aside from those two,

1 are you aware of any other PowerPlan services customers who
2 have done for work -- who have done work with Lucasys after the
3 IP protection program?

4 A. I'm not aware personally.

5 (Plaintiff's Exhibit No. 221 was marked and identified.)

6 BY MR. MAYES: (Resuming)

7 Q. Mr. Dahlby, I'm handing you Exhibit 221. Take a look
8 at that and tell me -- have you seen that before?

9 A. I have seen that. I wrote the e-mail, so --

10 Q. Okay. And the top e-mail doesn't appear to relate to
11 the rest of the chain; is that consistent with your
12 understanding?

13 A. I don't recall how it's related or not related, so --

14 Q. Okay. On the first sentence of your e-mail on the
15 top of the first page of Exhibit 221, it says, "I was thinking
16 about the RCC discussion on meeting or not with John, and one
17 thing that comes to mind is comments from the EAB." Did I read
18 that correctly?

19 A. Yes.

20 Q. What's the EAB?

21 A. Executive advisory board.

22 Q. And is that a board of your customers?

23 A. It is.

24 Q. And is the John here John Williams?

25 A. I actually don't recall.

1 Q. Okay. What RCC discussion is this referring to?

2 A. I don't -- I don't recall.

3 Q. Okay. Do you recall any discussions in early 2019
4 generally related to the treatment of RCC by PowerPlan?

5 A. I don't recall.

6 Q. Okay. The next sentence is, "Our customers
7 historically complained that with our rates and no alternatives
8 in the market they felt we had them over the barrel." Did I
9 read that correctly?

10 A. You read that correctly.

11 Q. And is that true that your customers historically
12 complained that with PowerPlan's rates and no alternatives in
13 the market they felt PowerPlan had them over the barrel?

14 A. Customers have communicated something to that effect.

15 Q. Was this -- was Mr. Gomes relatively new at this
16 point in time?

17 A. I was trying to remember the timeline. Yes, I
18 believe he was relatively new.

19 Q. Was part of this communication for you to bring him
20 somewhat up to speed on potential problems with potentially
21 trying to squeeze RCC out of the market?

22 MR. FAZIO: Objection to form.

23 THE WITNESS: I -- I don't remember the context of
24 this conversation, so -- or the e-mail here.

25 BY MR. MAYES: (Resuming)

1 Q. Okay. The next sentence says, "The SVP of tax from
2 Exelon said that people like the competition and it forces us
3 to provide a higher quality experience." Did I read that
4 correctly?

5 A. Yes.

6 Q. Is that Rob Kleczynski you were referring to in that
7 sentence?

8 A. I believe he was the -- at the time, yes.

9 Q. Okay. And that -- is that an accurate statement from
10 him that you reported to Mr. Gomes?

11 A. Actually, I want to -- I'm not sure if that was Rob
12 at the time. I'm trying to recall the -- when he took that
13 position. It could have been his predecessor.

14 Q. Okay. But this statement was accurate?

15 A. I don't know if it was the words that were used, but
16 I believe that was the -- a message that had been communicated,
17 yes.

18 Q. Okay. And then, the next sentence says, "So the
19 concerns from various people are what is perception from
20 utility market. You are probably sensing hesitation from
21 people on being aggressive." Did I read that correctly?

22 A. You read that correctly.

23 Q. So what are you referring to when you say the
24 concerns from various people? Who are you referring to there?
25 Are those PowerPlan people or customers you're referring to?

1 MR. FAZIO: Objection to form.

2 THE WITNESS: Again, I'm not -- I don't recall the
3 specific context of this conversation.

4 BY MR. MAYES: (Resuming)

5 Q. Okay. Do you remember any specific customers who had
6 historically complained in the manner described in the first
7 sentence of that paragraph?

8 A. I don't remember a specific customer, no.

9 Q. Okay. The next paragraph says, "I think a concern is
10 that if people get upset with our tactics, the industry could
11 side with John. Then, they will not upgrade, stay on old
12 versions, and not look to expand to new modules or platform."
13 Did I read that correctly?

14 A. Yes. You read that correctly.

15 Q. Okay. And that's John Williams at RCC?

16 MR. FAZIO: Objection.

17 THE WITNESS: In the context of that sentence, I
18 would say yes; that refers to John Williams.

19 BY MR. MAYES: (Resuming)

20 Q. And so is the concern that you're identifying here
21 that customers could choose not to use PowerPlan if PowerPlan
22 excluded RCC from competing for service opportunities?

23 A. Again, I don't recall the conversation that led to
24 this e-mail, so I'm trying not to speculate what that would
25 have been exactly.

1 Q. Well, as you sit here today, how do you interpret
2 that sentence? What's the concern?

3 A. I think the concern would be if we took an action
4 that people could have -- be upset about a tactic if we were to
5 eliminate services competition.

6 Q. And specifically with respect to RCC, correct?

7 A. I mean, I think that was the specific reference to
8 John there. I don't believe that that would have been the
9 holistic conversation.

10 Q. Okay. Was that something that was under
11 consideration at this time in February of 2019, excluding RCC
12 from competition in the services market?

13 MR. FAZIO: Objection to form and foundation.

14 THE WITNESS: I guess I don't recall the conversation
15 that led up to this, so --

16 (Plaintiff's Exhibit No. 222 was marked and identified.)

17 BY MR. MAYES: (Resuming)

18 Q. Mr. Dahlby, I'm handing you Exhibit 222. Take a look
19 at that and tell me if you've seen that before.

20 A. Okay.

21 Q. Okay. First, what is Aqua?

22 A. They're a customer of PowerPlan.

23 Q. And this is discussing a response to an RFP from
24 Aqua?

25 A. Yes.

1 Q. I wanted to start with the e-mail that begins on the
2 bottom of the first page from Jim Duffy. Let me know when
3 you're there.

4 A. Okay.

5 Q. This says, "My gut is just shaking us -- Ruth is just
6 shaking us down for the best deal possible." Did I read that
7 correctly?

8 A. Yes.

9 Q. Who is Ruth?

10 A. I recall her being a member of the Aqua team.

11 Q. Okay. This -- skip the next sentence, and it says,
12 "Eventide has a history there." Did I read that correctly?

13 A. Yes.

14 Q. Who is Eventide?

15 A. They're a consulting company.

16 Q. Okay. Do they provide services similar to those
17 provided by RCC and Lucasys?

18 A. That's my understanding.

19 Q. Okay. Does Eventide, to your knowledge, do data
20 cleansing and remediation for utility customers?

21 A. I'm not certain what -- what all they do.

22 Q. Okay. Do you know if they have a history of
23 accessing PowerPlan's databases?

24 A. I believe they've had access to PowerPlan. I don't
25 know if it was the database or the application with customers.

1 Q. Does PowerPlan have any sort of non-disclosure
2 agreement or authorized vendor agreement with Eventide?

3 A. We do not. They would have been working with
4 customers that were under license agreements.

5 Q. Okay. The -- your e-mail at the top of the page --
6 the first page of Exhibit 222 says, "Makes sense. Any thoughts
7 on bundling license discounts based on services purchases --
8 purchased, given it lowers our risk." Did I read that
9 correctly?

10 A. Yes.

11 Q. In what way would bundling license discounts with a
12 service purchase lower your risk?

13 A. So I believe this was in a sales context to lower the
14 risk of winning or losing -- you know, or losing an
15 opportunity. So that was the -- did that answer the question?

16 Q. Yeah, if that's what you meant when you wrote it. Is
17 that what you meant when you wrote it?

18 A. Sorry. Can you repeat the question?

19 Q. Yeah. In what way would bundling license discounts
20 based on a services purchase lower PowerPlan's risk? So what
21 did you mean when you wrote those words?

22 A. Yeah. So the risk in this case was risk of losing,
23 you know, the sales opportunity.

24 Q. And the sales opportunity in this case was services
25 business for Aqua?

1 A. And actually if I signed my licenses, it was the
2 combination.

3 Q. Okay. Were you concerned that Lucasys might put in a
4 bid to do both software and services in competition with
5 PowerPlan?

6 A. I don't recall if that was a concern or not.

7 Q. Okay. Well, the e-mail from Mr. Duffy specifically
8 references RCC and Lucasys, correct?

9 A. Yes.

10 Q. And it also says Lucasys would probably be aggressive
11 in their bid, too, on the next page of 222 -- the second page
12 of 222, correct?

13 A. Yes.

14 Q. But that is not risk you were identifying in your
15 e-mail -- your e-mail on the top page -- the top of the first
16 page of Exhibit 222; the risk of Lucasys potentially making an
17 aggressive bid at Aqua?

18 A. Yes. That was not -- I guess I'm maybe confused on
19 the way you phrased that question. Can you --

20 Q. Sure. I mean, by this point in time, Lucasys and
21 PowerPlan were already involved in a lawsuit, correct?

22 A. Yes.

23 Q. And PowerPlan had identified Lucasys a potential
24 software competitor, correct?

25 A. Correct.

1 Q. And PowerPlan had engaged in the IP protection wave
2 in order to prohibit Lucasys from accessing PowerPlan
3 databases, correct?

4 A. Yes.

5 Q. And the reason for that was because PowerPlan was
6 concerned about potential software competition, correct?

7 A. No. We were concerned about our IP being used in an
8 inappropriate manner.

9 Q. Well, I mean, you knew it was already being used by
10 consultants to compete in the consulting space, right?

11 MR. FAZIO: Objection to form and foundation.

12 THE WITNESS: Under the license agreements with our
13 customers.

14 BY MR. MAYES: (Resuming)

15 Q. Okay. And the only thing Lucasys was doing different
16 than the other consultants was also offering competitive
17 software; isn't that true?

18 MR. FAZIO: Objection to form and foundation.

19 THE WITNESS: That would be the most significant
20 difference, yes.

21 BY MR. MAYES: (Resuming)

22 Q. Okay. So that was a risk that PowerPlan viewed as
23 being more significant than the risk posed by services
24 competitors, true?

25 A. Yes.

1 Q. Okay. And my question on this specific document is,
2 was that the risk you were referring to when suggesting
3 bundling licenses and discounts based on services purchases?

4 A. So I believe the RP was only for services, so this
5 would have been specifically around services is my -- what I
6 recall about the Aqua RP.

7 Q. Okay. Are you familiar with a company called UPCO?

8 A. I am.

9 Q. What does UPCO stand for?

10 A. I believe it's Upper Peninsula something Power
11 Company. I don't -- I actually don't know what it stands for.
12 I just know they're a customer in the upper peninsula of
13 Michigan.

14 Q. At some point, did UPCO change from the on-premises
15 version of the PowerPlan software to the cloud-based version?

16 A. I'm actually not sure that they were ever on-premise.
17 I don't recall if they were ever on-premise.

18 Q. Okay. Are you aware of a company name TECO?

19 A. Yes.

20 Q. Is that a PowerPlan customer?

21 A. It is.

22 Q. What does TECO stand for?

23 A. It's an abbreviation for TECO Energy.

24 Q. At some point, did TECO refuse to go to the
25 cloud-based version because they did not want to give PowerPlan

1 exclusivity over professional services?

2 A. I don't recall if that was a specific conversation
3 with TECO.

4 Q. Were you ever involved in any conversations with
5 TECO?

6 A. I mean, I've had conversations with TECO many times
7 over my career.

8 Q. Okay. Did you have any about whether or not they
9 were going to move from the on-premises to the cloud version of
10 PowerPlan?

11 A. I don't recall all of those conversations. We've
12 talked at points in time about that.

13 Q. Okay. Did TECO switch from the on-premises to the
14 cloud version of PowerPlan?

15 A. TECO has not.

16 Q. Okay. And I guess what you're saying then is you
17 don't know why they did not?

18 A. I don't recall any specific conversation around that.

19 Q. Okay. If somebody else in PowerPlan reported that
20 they purposefully did not buy our cloud because they didn't
21 want to give us exclusivity over professional services, would
22 you disagree?

23 A. What -- I don't know what timeframe you're talking
24 about in this communication.

25 Q. In the summer of 2021?

1 A. Okay.

2 Q. Would you disagree if somebody reported that TECO
3 purposefully did not buy the cloud because they did not want to
4 give PowerPlan exclusivity over professional services?

5 A. My understanding is TECO has used third parties for
6 consulting services at times, so -- and at the time in 2021,
7 depending on when that was, you know, we did not have within
8 our security protocols the ability for third parties to get
9 access to do consulting services for a customer
10 (unintelligible).

11 Q. And at that point in time in the summer of 2021,
12 PowerPlan was taking the position that RCC could not access
13 databases stored in the cloud; isn't that true?

14 MR. FAZIO: Objection to form and foundation.

15 THE WITNESS: So our policies and procedures at the
16 time did not have a protocol that would allow external
17 parties to get access to our database.

18 BY MR. MAYES: (Resuming)

19 Q. And so that meant for a third-party consultant like
20 RCC, they could not do much of the work that they had
21 historically done; isn't that accurate?

22 MR. FAZIO: Objection to form.

23 THE WITNESS: It would depend on the work they were
24 completing, so --

25 BY MR. MAYES: (Resuming)

1 Q. But they did -- used to do work that they would no
2 longer be able to do, correct?

3 A. My understanding is they did a lot of work for
4 companies like UPCO even though they were in our cloud. So I
5 guess there are services if they were making -- you know, if
6 they needed access to the database to complete those services
7 that at the time there was not a protocol or procedure that
8 would enable that.

9 Q. And is it true that UPCO switched from the cloud
10 version to the on-premises version?

11 A. I'm not sure if that's been completed, but they are
12 in the process of switching.

13 Q. And is the reason that they're doing that so that
14 they can use third-party vendors like RCC?

15 A. I believe that was one reason they stated, but there
16 were other reasons, I believe, as well.

17 Q. Okay. What were the other reasons?

18 A. My understanding was the IT department wanting to
19 have and maintain their own infrastructure was one of the items
20 communicated -- shared with me.

21 Q. Did you personally view it as a risk that clients
22 might look to solutions other than PowerPlan if they could not
23 use consultants like RCC?

24 MR. FAZIO: Objection to form.

25 THE WITNESS: Can you repeat the question? I want to

1 make sure I understand it.

2 BY MR. MAYES: (Resuming)

3 Q. Sure. Did you view it as a risk that clients would
4 look at technology solutions other than PowerPlan if they could
5 not use RCC for consulting work?

6 A. I believe that is a potential risk.

7 (Plaintiff's Exhibit No. 223 was marked and identified.)

8 BY MR. MAYES: (Resuming)

9 Q. Okay. Mr. Dahlby, I'm handing you Exhibit 223 with a
10 courtesy copy for counsel. Have you seen this before?

11 A. I have seen this.

12 Q. Okay. Who is Nathaniel Huberick (ph)?

13 A. He's a PowerPlan employee.

14 Q. And what's his job at PowerPlan?

15 A. At the time in 2021 he was part of our alliances
16 team.

17 Q. And just what is that? What does the alliances team
18 do?

19 A. They work with third parties around PowerPlan.

20 Q. What was going on that led him to send you this
21 e-mail in September of 2021?

22 MR. FAZIO: Objection to form.

23 THE WITNESS: My recollection is we were discussing
24 UPSCO's -- some of UPSCO's requests around a potential
25 upgrade and some of the work that they were asking RCC to

1 do.

2 BY MR. MAYES: (Resuming)

3 Q. Okay. And it says, "Brett had a few comments on the
4 UPCO approach. You may be aware of some of these already
5 through separate conversations with Brett." Do you believe
6 that's referring to Mr. Burts?

7 A. I do.

8 Q. Okay. The first bulletpoint underneath that sentence
9 says, "Only RCC work after passing through subcontracting is
10 the work that requires access within the timeframe of the
11 overall tech upgrade." Did I read that correctly?

12 A. Yes, you read that correctly.

13 Q. What does that mean?

14 A. So based on our current procedures and policies, that
15 was one of the methods we had talked to UPCO about as a way to
16 enable them to have RCC complete some work that they were
17 interested in within a specific timeframe.

18 Q. So if I understand correctly, the proposal is that
19 perhaps RCC could be a subcontractor for PowerPlan; is that
20 correct?

21 A. That was one of the options presented to UPCO.

22 Q. Okay. Did that work? Was there ever a
23 subcontracting arrangement with RCC and PowerPlan?

24 A. There was not.

25 Q. Okay. Do you know why?

1 A. I don't know. The customer did not pursue that is my
2 understanding.

3 Q. Okay. A few bulletpoints down, there is one that
4 says, "Fallback option: Let RCC do the upgrade work as well.
5 Expand the pie for RCC." Did I read that correctly?

6 A. Yes.

7 Q. And what is that fallback option that's being
8 described there?

9 A. The formatting on this e-mail is making it difficult
10 to understand the -- okay. So, I mean, in the context of this
11 discussion with UPCO, we were discussing different -- different
12 arrangements through which we would potentially work with RCC,
13 what the scope of what they would do is versus what our team
14 would potentially do. We had -- prior to being communicated
15 about this, we were discussing with UPCO PowerPlan professional
16 services doing some work. And so these were different options
17 around how the scope of work could be separated between
18 PowerPlan and RCC.

19 Q. And UPCO wanted to use Power -- I'm sorry. Excuse
20 me. UPCO wanted to use RCC for its consulting work; is that
21 true?

22 A. We were told there was specific work that PowerPlan
23 doesn't perform that they wanted RCC to do.

24 Q. Did a similar issue with respect to a client using
25 RCC arise at PPL?

1 A. So the -- PowerPlan and RCC had collaborated on the
2 most recent implementation at PPL, including implementing
3 PowerPlan in the cloud. So I know there was additional work
4 they were interested in PPL completing -- or PPL was interested
5 in them completing.

6 MR. FAZIO: Josh, do you want to take a break?

7 MR. MAYES: Yeah. Now is fine since we're switching
8 to a new topic.

9 VIDEOGRAPHER: Okay. All right. Going off the
10 record.

11 (BREAK TAKEN)

12 VIDEOGRAPHER: Back on the record at 3:38 p.m.

13 BY MR. MAYES: (Resuming)

14 Q. Mr. Dahlby, back on the record. Can you confirm that
15 we did not have any substantive discussions about the case
16 during the break?

17 A. We did not.

18 Q. Did there come a time in 2019 where there was an
19 issue regarding RCC and PPL?

20 A. I don't recall any specific 2019 event, but -- is
21 there something specific you're asking about?

22 Q. Sure. Well, was there -- did there ever come a time
23 where there was an issue where RCC access at PPL was going to
24 be impacted by a PPL shift to the cloud?

25 A. So can you repeat that again to make sure I

1 understand?

2 Q. Sure. At some point, was PPL considering switching
3 from the on-premises to the cloud version of PowerPlan's
4 software?

5 A. Yes.

6 Q. Did PPL express a concern that that might impact
7 their ability to use RCC?

8 A. I don't recall if that was expressed at the time.

9 Q. Okay. Did it subsequently or at some point become an
10 issue?

11 A. In more recent -- in the last 12 months, we've had
12 conversations with PPL where they were interested in using RCC
13 for consulting services and had previously moved into our
14 cloud.

15 Q. And PPL had a history of using RCC for consulting
16 services; is that correct?

17 A. Yes, that's accurate.

18 Q. PowerPlan had considered potentially starting an
19 authorized vendor program back in 2019; is that true?

20 A. So from an alliances perspective, we considered
21 different options for how to work with third parties, yes.

22 Q. And one of those options was a certified partner
23 program; is that true?

24 A. I believe we -- yes, we had discussed certified
25 partner programs in the past.

1 (Plaintiff's Exhibit No. 224 was marked and identified.)

2 BY MR. MAYES: (Resuming)

3 Q. Okay. Mr. Dahlby, I'm handing you Exhibit 224. Have
4 you seen this before?

5 A. Yes, I would have seen this before.

6 Q. Okay. Let's start with the e-mail from Paul Chris at
7 11:21.

8 A. What page are you on?

9 Q. It's the one that has the Bates label at the bottom,
10 PowerPlan 413007. It's an e-mail at 11:21 from Paul Chris to
11 you and a number of other folks at PowerPlan.

12 A. Okay.

13 Q. So the first paragraph says, "Following our
14 discussion on RCC and PPL, Matt, Duffy, and I walked through
15 the contract for PPL, and a call is scheduled for the morning
16 of Tuesday, 2/19, to communicate our position with PPL." Do
17 you see that?

18 A. Yes, I see that.

19 Q. What -- were you involved in the discussion that's
20 being referenced here in this sentence?

21 A. I don't recall the specifics of that conversation, so
22 I --

23 Q. Do you know what issue generally had arisen at this
24 point in time with respect to RCC and PPL?

25 A. I don't recall the exact specifics as of

1 February 2019 or the exact details.

2 Q. Okay. This was a communication -- these are the --
3 this is the executive team that's copied on this including the
4 CEO; is that correct?

5 A. Primarily, yes.

6 Q. Okay. And you just don't recall in February 2019
7 what issue with RCC and PPL was important enough to be
8 discussed at the executive committee level?

9 A. I don't remember the exact specifics, no.

10 Q. Okay. The next sentence says, "During the meeting,
11 we discussed the potential ramifications of the communications
12 with our broader IOU customers." Did I read that correctly?

13 A. You read that correctly.

14 Q. Okay. I'm assuming from your last answer that you
15 don't know what the communications that are referenced in that
16 sentence are referred -- what communications that sentence is
17 referring to?

18 A. Yeah. I don't want to speculate what that would have
19 been.

20 Q. Okay. The last sentence in that paragraph says, "We
21 should anticipate that the communication of our position to PPL
22 will be quickly communicated to people involved in the AGA EEI
23 PowerPlan user group and other PowerPlan IOU customers." Did I
24 read that correctly?

25 A. You did.

1 Q. What is the AGA EEI PowerPlan user group?

2 A. It's a -- so AGA and EEI are organizations that have
3 member companies, primarily utilities. And they have a
4 PowerPlan user group.

5 Q. Okay. So there was a fear that whatever PowerPlan --
6 whatever these communications were that you can't recall to PPL
7 might reach that broader group; is that a fair characterization
8 of that sentence?

9 A. Yes.

10 Q. Okay. The next sentence says, "Potential impact
11 includes," and the first bulletpoint is, "Sole provider
12 backlash. Our EAB has expressed dissatisfaction with not
13 having more viable services provider options and has described
14 it as, quote, the PowerPlan hostage crisis." Did I read that
15 correctly?

16 A. You did read that correctly.

17 Q. Okay. Was that, in fact, something you had heard
18 from your executive advisory board?

19 A. Yes.

20 Q. Okay. The next sentence says, "The new AGA EEI
21 PowerPlan user group will likely -- likely perceive this as a
22 move towards a sole provider model." Did I read that
23 correctly?

24 A. You read that correctly.

25 Q. Okay. Does that refresh your recollection at all

1 about what this -- or the communications were about to PPL?

2 A. It doesn't.

3 Q. Okay. You don't recall any options being discussed
4 with respect to RCC that that group could perceive as a move
5 towards a sole provider model?

6 A. I don't recall the specifics.

7 Q. Okay. The next bulletpoint is recommendations, and I
8 want to talk about the one that says Certified Partner Program.
9 Do you see that?

10 A. Yes.

11 Q. And that recommendation is, "Quickly develop a
12 certified partner program that clearly describes what partners
13 can and cannot do in our cloud environment. Whether or not RCC
14 is one of those partners isn't terribly important, but zero
15 certified partners will surely cause sales headwinds." Did I
16 read that correctly?

17 A. Yes.

18 Q. Okay. Does that refresh your recollection at all
19 about what this issue -- the communications and the issue being
20 communicated with PPL about involved?

21 A. I guess I don't recall the specific communication
22 that's being discussed here, so --

23 Q. Okay. Did -- at this time in 2019, did PowerPlan, in
24 fact, develop a certified partner group?

25 A. We did not.

1 Q. Okay. The next bulletpoint says, "Lift and shift
2 impact: There are a number of customers, WEC, Talla (ph), PPL,
3 WGL, Amwater, AEP, Dominion Energy Tucson, that have used and
4 continue to use RCC for services which will cause some of them
5 to not lift and shift and sweat their current on-premise
6 classic install until final sunset." Did I read that
7 correctly?

8 A. You read that correctly.

9 Q. Okay. What does lift and shift mean in that context?

10 A. Taking their perpetual license software and posting
11 it in PowerPlan's cloud -- with PowerPlan's cloud services.

12 Q. So is this identifying that for customers that use
13 RCC for services, they may not want to change to the cloud
14 version of the software?

15 A. That is what this point is stating.

16 Q. Okay. And then next bulletpoint says, "At that
17 point, it's logical to assume these customers will evaluate all
18 options including PowerPlan new platform, Utegration, or ERP."
19 Did I read that correctly?

20 A. Yes, you read that correctly.

21 Q. Okay. What is Utegration?

22 A. They're a software provider and a services provider.

23 Q. Do they provide the same sort of services as RCC and
24 Lucasys?

25 A. They do not.

1 Q. Do they provide software that is competitive with
2 PowerTax?

3 A. I'm not sure if they have a specific software or they
4 -- they are an SAP-based software and they utilize a
5 combination of their software and SAP.

6 Q. Okay. Do you know if the combination of their
7 software and SAP is competitive with PowerTax?

8 A. It can be, yes.

9 Q. Can it do, as far as you know, deferred tax
10 calculations for regulated utilities using the ARAM method?

11 A. I don't know if it can or cannot.

12 Q. The next sentence -- the next part of that sentence
13 says ERP. What does ERP stand for?

14 A. Enterprise resource planning.

15 Q. Okay. And that -- is that SAP and Oracle?

16 A. That's a general term to refer to financial systems
17 such as SAP or Oracle.

18 Q. Okay. The next sentence says, "There are ten lift
19 and shift ops in the 2019 buckets of opportunity analysis
20 representing [REDACTED] in recurring revenue booking plans."
21 Did I read that correctly?

22 A. Yes.

23 Q. What are the -- how are those opportunities
24 identified? Like, what makes one PowerPlan customer an
25 opportunity for a lift and shift versus another?

1 A. I believe that lift and shift criteria is not
2 specifically opportunity-based. It's more of a general
3 analysis.

4 Q. Okay. Well, it says there are ten. Do you not read
5 that to be referring to ten specific customers?

6 A. I believe that was suggesting that we are looking to
7 get ten customers to define ten opportunities for that, not
8 that there are ten specifically identified.

9 Q. I see. So this is -- your plan is we're going to get
10 ten of these in 2019?

11 A. Yes.

12 Q. Okay. And not there are ten specific ones. Just out
13 of the potential opportunities, we hope to land ten of them; is
14 that correct?

15 A. Correct.

16 Q. Okay.

17 A. That's how I read that sentence.

18 Q. Okay. And then, the next sentence says, "Taking some
19 or all of our customers working with RCC out of the pool of
20 potential makes delivering on this plan very difficult." Did I
21 read that correctly?

22 A. Yes.

23 Q. Okay. So that's saying if RCC -- if the customers
24 who use RCC are not willing to lift and shift because of the
25 fact that they will no longer be able to use RCC, that will

1 make achieving that goal of getting ten difficult; is that
2 correct?

3 A. That's how I read that, yes.

4 Q. Okay. And the recommendation there on the first one
5 is the same as above with developing a certified partner
6 program; is that correct?

7 A. Yes.

8 Q. Okay. And the next bulletpoint says, "White space
9 sales impact." What do you understand that to mean; white
10 space sales impact?

11 A. So white space refers to what we could call PowerPlan
12 products that are licensed by existing customers. So if they
13 own one product but they own other products.

14 Q. Okay. And the sentence after that says, "RCC
15 actively influences customers to buy our software. As an
16 example, PPL 429K and Amwater 313K. They have an interest in
17 expanding the solution footprint and expanding their services
18 revenue." Did I read that correctly?

19 A. You read that correctly.

20 Q. Okay. So those sentences are saying that RCC helps
21 PowerPlan sell software; is that correct?

22 A. There was, yes, the two examples listed there that
23 were involved, yes.

24 Q. Okay. The next sentence says, "If that changes, they
25 make wield their influence to deter customers or when possible

1 promote other software vendors and solutions to work with."

2 Did I read that correctly?

3 A. That's correct. You read that.

4 Q. Okay. So this is another potential risk is that RCC
5 may start supporting other software other than PowerPlan
6 software; is that correct?

7 A. That's what that statement says, yes.

8 Q. Okay. And if you flip to the next page, you will see
9 the recommendation there is a certified partner program; is
10 that correct?

11 A. That is correct.

12 Q. And again, that was not done?

13 A. We did not in 2019 create a certified partner
14 program.

15 Q. Okay. The next bulletpoint there says, "Stickiness
16 in competition." The first sentence says, "We are facing
17 numerous competitive threats with Utegration as the most
18 formidable at our SAP IOU customers." Did I read that
19 correctly?

20 A. Yes.

21 Q. Okay. This was before you had identified Lucasys as
22 a competitive software threat; is that correct?

23 A. I believe that's the case.

24 Q. Okay. It says, "Utegration is targeting NA IOUs to
25 sell services and potentially competitive software solutions."

1 Did I read that correctly?

2 A. Yes.

3 Q. And NA in that sense means North American?

4 A. Yes.

5 Q. Okay. The last sentence of that says, "RCC helps
6 keep PowerPlan sticky." Did I read that correctly?

7 A. Yes, you read that correctly.

8 Q. What does that mean?

9 A. The way I interpret what's been written there is that
10 -- saying that if RCC is implementing our software, that makes
11 PowerPlan overall keep -- maintain longer relationships with
12 our customers.

13 Q. Okay. And the recommendation again under this
14 bulletpoint is a certified partner program; is that correct?

15 A. Correct.

16 Q. If you go down to the bulletpoint that says RCC
17 meeting, it says, "If Jonathan Williams, President of RCC, is
18 willing to meet, it is recommended that we take the meeting.
19 As discussed, there seems to be very little downside. We might
20 learn valuable information and who knows; find a mutually
21 beneficial path -- mutually beneficial path forward." Did I
22 read that correctly?

23 A. Yes.

24 Q. As far as you know, was there a meeting with Jonathan
25 Williams around this time in February of 2019?

1 A. Not to my knowledge.

2 Q. I want you to look back at Exhibit 221 that we looked
3 at before the last break. That was roughly contemporaneous
4 with this e-mail that we just looked at; isn't that true, three
5 days before it?

6 A. Yes.

7 Q. Does that refresh your recollection at all as to what
8 RCC discussion you were referring to in your e-mail to
9 Mr. Gomes on February 14th of 2019?

10 A. Again, I don't remember the specific discussion that
11 we're talking about here, so --

12 Q. If you flip to the first page of Exhibit 224, your
13 e-mail at the top, the first sentence says, "Paul said he plans
14 to share with PPL on Tuesday." Did I read that correctly?

15 A. Yes.

16 Q. Who -- first, who is Paul?

17 A. Paul Chris. He was in the e-mail chain.

18 Q. Okay. The one who wrote the e-mail we just went
19 through in detail, correct?

20 A. Yes.

21 Q. What was it he was going to share with PPL on
22 Tuesday?

23 A. I don't recall what was shared with PPL on Tuesday.

24 Q. Okay. Was PowerPlan at this point in time, to your
25 knowledge, planning on trying to pursue a certified partner

1 program?

2 A. It was something that was discussed. I don't --
3 again, I don't remember the specific options or whatever was
4 being discussed here and what communication that was
5 specifically -- specifically talked about around this meeting
6 on Tuesday.

7 Q. Okay. And you don't know whether Paul communicated
8 to PPL that PowerPlan was going -- or willing to pursue a
9 certified partner program potentially with RCC or others at
10 this point in time?

11 A. I do not know if that was communicated to PPL.
12 (Plaintiff's Exhibit No. 225 was marked and identified.)

13 BY MR. MAYES: (Resuming)

14 Q. Okay. Mr. Dahlby, I'm handing you Exhibit 225. Take
15 a look at that and tell me if you have seen that before.

16 A. Okay. Yes, I'm familiar with this.

17 Q. Okay. Did you -- do you believe you read this e-mail
18 chain around the time in September and October of 2021?

19 A. Yes.

20 Q. I want you to flip to the page at 408958 in the
21 bottom right-hand corner, and look at the e-mail from John
22 Erickson on Monday, September 27th, at 3:43 p.m.

23 A. Okay.

24 Q. This says, "Please see the note below. PPL is
25 considering bringing PowerPlan back on-premise due to the

1 issues with RCC access." Did I read that correctly?

2 A. You read that correctly.

3 Q. Okay. What did you understand that to mean?

4 A. So at the time, PPL had an on-premise database and
5 RCC was utilizing that in conjunction with PowerPlan to provide
6 services. So -- and so because of the passage of time, that
7 database was no longer going to allow them to support the
8 specific services that they were discussing, and so they were
9 -- PPL was looking for options at that time to continue with
10 the services that they -- they needed to be performed.

11 Q. Okay. Let me make sure I understand the timeline.
12 Back in 2019, the e-mails we're looking at regarding PPL and
13 RCC, at that point in time PPL had on-premise software; is that
14 correct?

15 A. Yes.

16 Q. Okay. At some point after that, PPL moved to the
17 cloud-based version; is that accurate?

18 A. So there was a project. RCC and PowerPlan worked
19 together, and then PPL moved their software into PowerPlan's
20 cloud is accurate.

21 Q. Okay. And that migration to the cloud caused issues
22 with RCC's access. That's what is being reported here in this
23 e-mail; is that correct?

24 A. Correct. So at the time of this conversation, there
25 wasn't a policy or procedure that would allow third parties

1 access to cloud environments is accurate.

2 Q. Okay. And so as a result of that, PPL was
3 considering switching back from the cloud-based version to an
4 on-premise classic version; is that correct?

5 A. That is the -- what they -- one of the options that
6 they told us they were considering, yes.

7 Q. Okay. And that's the same thing that happened with
8 UPCO, correct?

9 A. That was -- yes.

10 Q. Okay. If you flip to the first page of Exhibit 225,
11 there is an e-mail from here from Nathaniel Huberick. It says,
12 "Jim, welcome back. I have formalized the next steps at PPL
13 largely in line with your PPTX sent to leadership but with
14 actual dates." Did I read that correctly?

15 A. Yes.

16 Q. What were -- next steps at PPL for doing what?

17 A. Providing a mechanism by which RCC would be able to
18 have access to our cloud environment.

19 Q. Okay. Underneath it, there are -- underneath that
20 paragraph, there is a statement that says, "PPL notes," with
21 some bulletpoints. Do you see that?

22 A. Yes.

23 Q. Did you understand that to be Mr. Huberick relaying
24 to you information he had received from PPL?

25 A. Or someone who had received it from PPL, yes.

1 Q. Okay. And so the first bulletpoint there says, "PPL
2 keen to make quick decisive decision on future of the cloud
3 ASAP, no later than mid-November." Is that correct?

4 A. Yes.

5 Q. So if you look at your e-mail above that, the top
6 e-mail at the beginning of Exhibit 225, it says, "Is 11/19
7 decision date." Is that correct?

8 A. Yes.

9 Q. Is that -- is that referring to the quick decisive
10 decision referred to in that first bulletpoint?

11 A. I mean, it believe it is referred to further down in
12 No. 3(a) towards the bottom of the page.

13 Q. Okay. That one says, "Complete by 11/19 stated
14 deadline." I guess I have the same question as you had. What
15 is that deadline? What was your understanding of that deadline
16 if you ever developed one?

17 A. To complete steps one, two, and three. Or to
18 complete steps one and two.

19 Q. Okay. Did you, in fact, have an agreement signed
20 with RCC by 11/19?

21 A. I don't recall the specific date that we had the --

22 Q. Okay.

23 A. -- agreement signed with RCC.

24 Q. The fourth bulletpoint under PPL notes says, "RCC
25 Joel Scheckler (ph) was not dismissive of the verbal cloud

1 access offer. Proof is in the physical offer and legal
2 arrangement to support." Did I read that correctly?

3 A. Yes.

4 Q. What did you understand that to mean?

5 A. That Nathaniel had had a conversation with Joel
6 around PowerPlan providing a method by which they would be able
7 to get access to the cloud.

8 Q. This series of communications with PPL ultimately
9 resulted in an authorized vendor agreement between RCC and
10 PowerPlan; is that correct?

11 A. That's correct.

12 Q. It's true that that had been brought up as early as
13 2019, but did not actually come to completion until after PPL
14 threatened to move back to an on-premise solution; is that
15 true?

16 MR. FAZIO: Objection to form.

17 THE WITNESS: I don't believe those two things are
18 the same, so --

19 BY MR. MAYES: (Resuming)

20 Q. Okay. You don't believe that the authorized vendor
21 agreement is the same as a certified partner program; is that
22 what you mean?

23 A. Yes. Those are not the same.

24 (Plaintiff's Exhibit No. 226 was marked and identified.)

25 BY MR. MAYES: (Resuming)

1 Q. Okay. Mr. Dahlby, I'm handing you Exhibit 226. Have
2 you seen this before?

3 A. Yes, I've seen this.

4 Q. Okay. Did you have any role in negotiating this
5 agreement with RCC?

6 A. Yes. I was involved in those conversations.

7 Q. Okay. Is it your understanding that under the terms
8 of this agreement there are still services that RCC used to
9 provide to PPL that it will no longer be allowed to provide to
10 PPL?

11 A. I'm not aware of any.

12 Q. Okay. If you flip to Exhibit A, which is RCC 904, do
13 you see that?

14 A. Yes.

15 Q. Do you see the list of restrictions down there?

16 A. Yes.

17 Q. Okay. What does it mean when it says, "PowerPlan
18 will not provide the following: 3) Developer access to the
19 PowerPlan integration hub to create or alter integrations
20 moving data to or from the PowerPlan cloud database?"

21 A. So within the PowerPlan cloud infrastructure, the
22 integration hub component was something that we're not
23 permitted to give access to anyone other than PowerPlan.

24 Q. So if RCC wanted to do a data cleansing project for
25 PPL under this agreement, how would it get the database out of

1 the PowerPlan cloud in order to do that?

2 A. They would use the access as provided.

3 Q. And just mechanically, how would that work? You said
4 they would use the access. They can't access it through the
5 PowerPlan integration hub, correct?

6 A. Correct. They would utilize the access as provided
7 in the database permissions and the tools provided under the
8 application integration access privileges.

9 Q. Well, isn't use of the PowerPlan integration hub
10 necessary to move data to and from the PowerPlan cloud
11 databases?

12 A. As it relates to a specific ongoing integration but
13 not for the project-related work that I understand RCC is
14 completing.

15 Q. I see. So your understanding of this restriction is
16 this is solely limited to what?

17 A. Data that needs to move through the ongoing
18 integration hub, and we have tools within that framework for
19 things like secure file FTP. So if RCC has a file that they
20 need to move, there is a method by which they can put that in
21 there, and the secure FTP would move that file from said
22 environment outside the PowerPlan cloud into the PowerPlan
23 cloud.

24 Q. Okay. So just so I'm clear, your understanding is
25 RCC under this agreement should be able to do all of the work

1 that it previously did for PPL?

2 A. Yes.

3 Q. Okay. And isn't it true that the reason that
4 PowerPlan was willing to enter into these authorized vendor
5 agreements with RCC was that it was afraid its customers
6 wouldn't use its cloud product anymore?

7 MR. FAZIO: Objection to form and foundation.

8 THE WITNESS: Can you repeat the question or --

9 BY MR. MAYES: (Resuming)

10 Q. Yeah. Sure. The question is, was the motivation
11 behind PowerPlan entering into this authorized vendor agreement
12 fear that PowerPlan customers would not use the cloud-based
13 solution?

14 A. I wouldn't call it -- I mean, I wouldn't say it was
15 fear. I would say we -- we're always gathering feedback from
16 our customers and looking for ways to improve our software and
17 our other services offerings.

18 Q. And one PowerPlan customer had already switched back
19 from the cloud to the on-premise solution, correct?

20 A. That's accurate. And had communicated that was their
21 plan. That's accurate.

22 Q. Okay. And a second one had expressed the same desire
23 to do that, correct?

24 A. I don't know if they expressed a desire to do that --
25 I could categorize that they expressed that they had a desire

1 to move it on-premise. My understanding is they expressed that
2 was one of the options they were considering.

3 Q. I gotcha. Were you involved or did you see or review
4 the draft authorized vendor agreement that was provided to
5 Lucasys?

6 A. So I understand that it was provided by a customer of
7 Lucasys is my understanding; is that accurate?

8 Q. I'm just asking you what you know. Did you see a
9 draft authorized vendor agreement between Lucasys and
10 PowerPlan?

11 A. We did not see a draft of a specific authorized
12 vendor agreement between Lucasys and PowerPlan.

13 Q. Okay. You personally did not?

14 A. Correct.

15 Q. Okay. And I take it from that that you also did not
16 see proposed revisions to any initial draft of an authorized
17 vendor agreement between Lucasys and PowerPlan?

18 A. So I believe we provided a generic authorized vendor
19 agreement to a customer who was considering a cloud who I
20 believe provided it to Lucasys. I was told by counsel they
21 provided redlines. I did not see what comments or redlines
22 were provided.

23 Q. Okay. Did you have any input into the decision at
24 PowerPlan, setting aside communications with counsel, as to
25 whether or not the authorized vendor agreement as revised by

1 Lucasys would be acceptable to PowerPlan?

2 A. I was not involved in the conversations around that.

3 (Plaintiff's Exhibit No. 227 was marked and identified.)

4 BY MR. MAYES: (Resuming)

5 Q. Okay. Mr. Dahlby, I'm handing you Exhibit 227 with a
6 courtesy copy for your counsel. Take a look at that and tell
7 me if you've seen this exchange before.

8 A. Yes, I've seen this e-mail previously.

9 Q. Okay. My question is about -- actually, if you flip
10 to Page 2 of Exhibit 227, the first paragraph at the top from
11 Mr. Carr on which he CC'ed you says, "I also did an hour QA on
12 Liberty Yulu (ph) yesterday." Did I read that correctly?

13 A. Yes.

14 Q. Is that someone's name, Liberty Yulu?

15 A. Yulu is the name.

16 Q. Okay. So Yulu is the name. Is Liberty the customer?

17 A. That was my understanding, yes.

18 Q. Okay. The next sentence says, "It was bad to say the
19 least. The one company that's being implemented in release one
20 is a tiny company that I could have converted in a week." Did
21 I read that correctly?

22 A. Yes. You read that correctly.

23 Q. Okay. Do you know what it means when it says that's
24 being implemented in release one?

25 A. So Liberty is implementing a project and they're

1 having multiple releases, so different entities are in each
2 release.

3 Q. I see. Is that sort of like they're putting whatever
4 software they're implementing in different Liberty
5 subsidiaries, for lack of a better word?

6 A. Yes.

7 Q. And they're doing that in a staged manner?

8 A. That's correct.

9 Q. Okay. And what Mr. Carr is saying here is that the
10 first one is small and easy; is that correct?

11 A. At least for him. I think that's how he has implied
12 it, so this was his comment.

13 Q. Okay. And then, the next sentence says, "Yulu has
14 billed 241 hours." Is that correct?

15 A. That's what it says, yes.

16 Q. Okay. So that's more like six weeks worth of work
17 than one week worth of work, correct?

18 A. Correct.

19 Q. And the next sentence says, "She's also delivering
20 training to Liberty today," correct?

21 A. Yes, it says that.

22 Q. And then, it says, "Although she can explain the
23 basics, she can't answer questions. Her and I discussed that
24 yesterday and she admitted she is going to be in trouble." Is
25 that correct?

1 A. That's what it says, yes.

2 Q. Okay. The next sentence says, "They have RCC engaged
3 at Empire and if they have RCC review our hours and completed
4 tasks, we're in big trouble." Did I read that correctly?

5 A. That's what he said, yes.

6 Q. Okay. What does it mean when it says, "They have RCC
7 engaged at Empire?" Is that a different Liberty subsidiary?

8 A. It is.

9 Q. Okay. And is the concern -- you understand the
10 concern here to be that RCC would share the same opinion as
11 Mr. Carr that this shouldn't have taken 241 hours?

12 A. That's what he appears to be communicating.

13 Q. Okay. And it says -- the next sentence says, "I saw
14 the PowerTax hours billed as well; massive hours for a small
15 company, and Michael had to do and redo work." Is that
16 correctly correct -- or did I read that correctly?

17 A. That's what it says there, yes.

18 Q. Okay. Is that something separate, PowerTax hours
19 billed than this release one implementation; is that how you
20 understand that?

21 A. I'm not sure what Yulu was responsible for in that
22 project, so --

23 Q. Do you know if this is the sort of work that Lucasys
24 would have been doing for Liberty at the time that they were
25 terminated?

1 A. I don't believe that is the work that -- like, my
2 understanding is this work was in the PowerPlan SOW that was
3 signed by Liberty prior to us having any knowledge of Liberty
4 -- or Lucasys being engaged.

5 Q. Okay. So this was -- so the communications from
6 PowerPlan to Liberty were in 2020; is that correct? Right? I
7 don't know if you recall that. We looked at those documents
8 earlier.

9 A. Yes, I believe that.

10 Q. Okay. So you believe that in February of 2021 this
11 work that was going on was related to some other PowerPlan
12 statement of work that was pre-existing that 2020 communication
13 to Liberty?

14 A. Correct.

15 Q. Okay. If you look at the last paragraph here, the
16 second to last sentence of that paragraph says, "Maybe a
17 CHPK-like solution is needed in the short-term." Do you know
18 what a CHP-like -- CHPK-like solution is?

19 A. CHPK would have been referring to a particular
20 customer in Chesapeake. I don't recall the specific solution
21 he was talking about.

22 (Plaintiff's Exhibit No. 228 was marked and identified.)

23 BY MR. MAYES: (Resuming)

24 Q. Mr. Dahlby, I'm handing you Exhibit 228 with a
25 courtesy copy for your counsel. Take a look at that and tell

1 me if you've seen that before.

2 A. Yes, I have seen this.

3 Q. Do you know if this is the genesis of the Con Ed
4 communications you were referring to earlier?

5 A. Can you rephrase the question genesis? I'm not --

6 Q. Sure. You said earlier that there were some
7 communications with Lucasys about an authorized vendor
8 agreement that went through Con Ed; do you recall that?

9 A. Yes.

10 Q. Do you know if that's related to these -- this e-mail
11 chain in any way?

12 A. That would have been very different timelines, right?
13 That was in the last three or four months, and this was an
14 e-mail back from 2021.

15 Q. Okay. And that -- that's really my question is, you
16 know, was this the start of whatever led to an authorized
17 vendor agreement being sent from Con Ed to Lucasys?

18 A. It was not.

19 Q. Okay. The e-mail on the bottom says, "Jim, I
20 received a quick question Friday from Joel and Mark regarding
21 our stance on third-party access in PowerPlan's cloud in
22 reference to a future meeting with Con Ed." Did I read that
23 correctly?

24 A. Yes.

25 Q. Who are Joel and Mark?

1 A. This was Joel who we saw an e-mail from earlier who
2 was at Manna Services, and Mark was on his team.

3 Q. Okay. So this -- these are internal PowerPlan
4 employees, Joel and Mark?

5 A. They are.

6 Q. Is that Joel McManus?

7 A. Yes.

8 Q. Okay. The next sentence says, "It is well known that
9 Vu Nguyen and another internal contractor utilized significant
10 access granted through the existing on-premise solution at Con
11 Ed." Did I read that correctly?

12 A. Yes.

13 Q. Okay. As far as you know, was that true?

14 A. That's what I believe to be true, yes.

15 Q. Okay. And the next sentence is a question. "Are you
16 okay with Joel and Mark utilizing the same framework presented
17 to UPCO, RCC, and Con Ed to afford that opportunity." Did I
18 read that correctly?

19 A. Yes.

20 Q. What was the framework that was presented to UPCO and
21 RCC?

22 A. I believe that was one of the exhibits that we had
23 discussed earlier, which was -- you know, we had shared a few
24 different options with UPCO around how they could work with
25 PowerPlan and RCC in the cloud.

1 Q. Okay. And you have an e-mail at the top. Did --
2 it's a very short one-sentence e-mail. "One challenge is Vu
3 has been associated with a software competitor." Is that
4 referring to -- is that answering this question that I just
5 read?

6 A. It is not.

7 Q. Okay. What sentence is -- what question is that in
8 response to or is it in response to the entire e-mail?

9 A. It's just a general statement in response to the
10 e-mail.

11 Q. Okay. Did you ever provide an answer to the question
12 of whether or not you were okay with utilizing the same
13 framework presented to UPCO and RCC at Con Ed?

14 A. My recollection is we agreed that we'd communicate a
15 more general conversation with Con Ed if it was asked. I don't
16 believe the question was asked on that.

17 Q. Okay. What did you mean when you said, "One
18 challenge is Vu has been associated with a software
19 competitor?"

20 A. So I was aware that Vu has a -- is connected to
21 Lucasys on LinkedIn and is referenced on LinkedIn.

22 Q. Okay. And the relationship with Lucasys or the
23 association with Lucasys was a potential impediment in your
24 view to offering the same sort of options that had been offered
25 to UPCO with respect to RCC; is that correct?

1 MR. FAZIO: Objection to form.

2 THE WITNESS: Can you restate your question?

3 BY MR. MAYES: (Resuming)

4 Q. Yeah. The potential -- whatever association there
5 was between Vu Nguyen and Lucasys you viewed as a potential
6 impediment to offering the same framework that had been
7 presented to UPCO and RCC; is that correct?

8 MR. FAZIO: Objection to form.

9 THE WITNESS: The -- the question was we needed to
10 get further legal advice from our internal counsel is what
11 I was recommending -- or in a subsequent conversation, I
12 recommended that we have a conversation with legal
13 counsel.

14 BY MR. MAYES: (Resuming)

15 Q. Are you familiar with a company named via Barnabas?

16 A. I am.

17 Q. What is via Barnabas?

18 A. They're a consulting company that worked on projects
19 related to PowerPlan in the past. I don't know anything more
20 than -- specific recently.

21 Q. Okay. Do you know if they offered the same kind of
22 services that RCC and Lucasys offer?

23 A. I don't believe that they have the same -- all the
24 same services. I think they offer similar services.

25 Q. Okay. Did PowerPlan ever demand that via Barnabas

1 enter into a non-disclosure agreement?

2 A. I don't recall if we did or not.

3 MR. MAYES: We've been going for like another hour.

4 Why don't we take a break? I've only got one pretty short
5 topic left.

6 VIDEOGRAPHER: Okay. Off the record at 4:28 p.m.

7 (BREAK TAKEN)

8 VIDEOGRAPHER: Back on the record at 4:41 p.m.

9 BY MR. MAYES:

10 Q. Mr. Duffy -- I'm sorry. Mr. --

11 MR. FAZIO: I thought you said Duffy.

12 BY MR. MAYES: (Resuming)

13 Q. I did say Duffy. I was going to correct it and say
14 Mr. Dahlby. Can you confirm for me that we had no substantive
15 discussions while we were off the record?

16 A. Yes. We did not have any.

17 (Plaintiff's Exhibit No. 229 was marked and identified.)

18 BY MR. MAYES: (Resuming)

19 Q. Okay. Thank you. You're not copied on this, but I'm
20 going to show it to you anyway. I'm handing you Exhibit 229.
21 I want to ask you about the reference in the first line, and
22 tell me when you've read that first sentence.

23 A. Yes.

24 Q. Are you aware of any audit by Roper Technologies
25 around the time of April 2019?

1 A. I don't know what specifically that's referring to.

2 Q. Okay. Were you involved in any way -- let me just
3 read the sentence. The second part of the sentence says, "I
4 would like to escalate a concern regarding -- a concern
5 regarding PowerPlan intellectual property and trade secrets and
6 a third party, via Barnabas Consulting." Do you see that?

7 A. Yes.

8 Q. Were you involved at all with the escalation of a
9 concern regarding via Barnabas Consulting with Enbridge?

10 A. I recall hearing about it. I was not -- I don't
11 recall being directly involved.

12 Q. Okay. So did you have any communications with
13 Enbridge related to any concerns about PowerPlan intellectual
14 property or trade secrets?

15 A. I don't recall having direct communication with
16 Enbridge on that.

17 Q. Okay. Did you have any communications with via
18 Barnabas Consulting about that topic?

19 A. I don't recall having any direct conversations with
20 via Barnabas, no.

21 Q. Okay. And I think you said this, but were -- are you
22 aware of any audit by Roper Technologies regarding PowerPlan
23 intellectual property and trade secrets that took place around
24 the beginning of 2019?

25 A. I don't recall what that might be referring to, no.

1 Q. Okay. Who else is currently on the leadership team
2 at PowerPlan?

3 A. Are you talking about our executive leadership team?

4 Q. Yes.

5 A. Joe Gomes, Kevin Gianflone (ph), Neal Tisdale,
6 Suzanne Ward, Sarah Park.

7 Q. Any others?

8 A. The -- I'm trying to think if there are any others.
9 I guess Matt Crye reports to Suzanne Ward but is involved in
10 the -- some of the activities.

11 Q. Okay. Are any of those folks, do they have a longer
12 tenure at PowerPlan than you?

13 A. Matt Crye.

14 Q. Okay. When -- do you know how long he's been working
15 for PowerPlan?

16 A. More than 23 years. I don't know if it's 24-ish.

17 Q. Okay. Aside from you and Mr. Crye, who is the next
18 most senior person on that executive leadership team?

19 A. It would be Sarah Park. And I may have forgotten
20 somebody, so --

21 Q. Okay.

22 A. I can't recall off the top of my head right now.

23 Q. No problem. It's not a memory test. Do you know how
24 long Ms. Park has worked for PowerPlan?

25 A. I don't.

1 Q. Do you know if it's more or less than ten years?

2 A. I believe it's less than ten years, but --

3 Q. Okay.

4 A. Or maybe approaching it.

5 Q. To whom do you report at PowerPlan?

6 A. Joe Gomes.

7 Q. And who did you report to -- have you always reported
8 to him during his entire tenure as CEO?

9 A. Yes, I'd say that.

10 Q. Okay. To whom did you report before Mr. Gomes was
11 CEO?

12 A. The chief operating officer.

13 Q. And who was that?

14 A. Brent Burns.

15 Q. When did Mr. Burns leave PowerPlan?

16 A. I don't recall the exact date. I believe it was
17 2018, but it may have been 2019.

18 Q. So Mr. Burns was chief operating officer, he left
19 around the time Mr. Gomes started, and then you began reporting
20 to Mr. Gomes?

21 A. I don't remember if there was an interim stage in
22 there, but yeah, that --

23 Q. Okay. We talked before the break about a PowerPlan
24 employee named Yulu. Is that Yulu Wong (ph)?

25 A. I don't recall her last name.

1 Q. Okay. Do you know what her background is?

2 A. She was a tax consultant. I don't know what her
3 background was.

4 (Plaintiff's Exhibit No. 230 was marked and identified.)

5 BY MR. MAYES: (Resuming)

6 Q. Okay. Mr. Dahlby, I'm handing you Exhibit 230. Take
7 a look at that and tell me if you have seen that before.

8 A. Yes, I have seen this.

9 Q. Did you read this e-mail around the time you received
10 it in February of 2020?

11 A. I did.

12 Q. The first bulletpoint -- so looking at the e-mail
13 that Mr. Duffy sent at 2:34 that begins on the first page of
14 Exhibit 230, there are some bulletpoints that say, "Jason told
15 me." Do you see that?

16 A. Yes.

17 Q. And that's referring to Jason Stevens at Deloitte?

18 A. Yes, that's what the e-mail says.

19 Q. Okay. It said, "Utegration sponsored the meeting and
20 has a speaking slot, and they are bringing the CFO of NRG to
21 the meeting to talk about their success." Did I read that
22 correctly?

23 A. Yes.

24 Q. Do you know what this is referring to about the
25 success of Utegration at NRG?

1 A. They replaced some of the PowerPlan products with
2 Utegration software.

3 Q. Do you know if they completely replaced PowerPlan's
4 software?

5 A. My understanding is they're still using some of our
6 tax software.

7 Q. Okay. So as far as you know, NRG is still using
8 PowerTax; is that correct?

9 A. That's my understanding, yes.

10 Q. Okay. If you go down to the third bulletpoint there,
11 or dash, it says, "Jason has been told explicitly by a senior
12 person at Utegration that their PowerPlan replacement solution
13 flat out does not work." Did I read that correctly?

14 A. You read that correctly.

15 Q. Do you know if that's true?

16 A. I do not know if that's true.

17 Q. Okay. Have you heard industry feedback about whether
18 or not NRG has been successful in using Utegration's product as
19 a replacement for PowerPlan's products?

20 A. The only feedback I've personally seen was their --
21 one of their executives presented at an SAP conference.

22 Q. Okay. Do you personally have a relationship with
23 people at NRG?

24 A. I do not.

25 (Plaintiff's Exhibit No. 231 was marked and identified.)

1 BY MR. MAYES: (Resuming)

2 Q. Okay. Mr. Dahlby, I'm handing you Exhibit 231. Have
3 you seen that before?

4 A. I have seen this, yes.

5 Q. Okay. You forwarded this e-mail string to Kanav (ph)
6 Patel; is that correct? Right there on the very top of the
7 first page of Exhibit 231.

8 A. Yes.

9 Q. Who is Kanav Patel?

10 A. He's a strategic account executive for PowerPlan.

11 Q. Do you know why you forwarded this e-mail string to
12 him?

13 A. Because I thought there was information he might be
14 interested in.

15 Q. Was it related to a specific customer of his?

16 A. I don't recall.

17 Q. Okay. The e-mail below that from Alex Elkin (ph) --
18 who is Alex Elkin?

19 A. He's a PowerPlan employee.

20 Q. And what's his role?

21 A. At the time he was a VP of product management.

22 Q. Okay. And it says accounting. Does that delimit an
23 area of responsibility for him?

24 A. Yes.

25 Q. All right. And how -- what area of responsibility is

1 that?

2 A. Accounting.

3 Q. Is that -- is another way of referring to that -- do
4 sometimes people refer to that as plant?

5 A. In this context, accounting would be broader where
6 plant would be anything accounting-related.

7 Q. Okay. Would that include tax?

8 A. No.

9 Q. Okay. So anything other than tax accounting-related?

10 A. There are other areas within our product organization
11 for platform, FPNA, so -- that have different responsibilities.

12 Q. I want you to look at the first two sentences -- or
13 really the second sentence of this e-mail. It says, "I agree
14 that Utegration is the largest and most significant threat to
15 our core utility customer base." Did I read that correctly?

16 A. You read that correctly.

17 Q. Okay. When it says core utility customer base,
18 that's a phrase I've seen in several documents. Do you have an
19 understanding of who PowerPlan's core customer base is?

20 A. I would say generally speaking, that's talking about
21 investor-owned utilities in North America.

22 Q. Okay. The next sentence says, "We should expect
23 competition at every S/4HANA transition for fixed assets and
24 lease the NRG story, and even regulatory. They are claim --
25 they claim some similar capabilities, but most customers use it

1 for real-time FERC translation, not our core regulatory case."

2 Did I read that correctly?

3 A. I think technically it says, "not out core regulatory
4 case."

5 Q. Oh, fair enough. Do you think that he meant to say,
6 "not our core regulatory case?"

7 A. I would probably make a similar assumption.

8 Q. Okay. What does S/4HANA mean?

9 A. It's a version of SAP's ERP.

10 Q. And it looks like when he says the NRG story that NRG
11 replaced PowerPlan for fixed assets and lease. Am I reading
12 that correctly?

13 A. Yes.

14 Q. Okay. Is that your understanding of what it is that
15 NRG switched from PowerPlan to Utegration for fixed assets and
16 lease?

17 A. There would have been other products within the
18 PowerPlan suite that would be under that -- I'll call it an
19 umbrella.

20 Q. Okay. And the next sentence -- part of that sentence
21 says, "And even regulatory." What does -- what is the
22 distinction there. What is regulatory in that context?

23 A. It would be referring to our regulatory software.

24 Q. What is your regulatory software?

25 A. Software for regulatory purposes. It could be

1 re-cases or other --

2 Q. Is there a particular PowerPlan module that you would
3 think of -- or modules that you would think of as being
4 encompassed by the descriptive word "regulatory" in this
5 sentence?

6 A. I would.

7 Q. What are those?

8 A. There are essentially four products that make up our
9 regulatory suite of products.

10 Q. Okay. What are they?

11 A. I don't recall the exact names of the four products,
12 but one of them is our regulatory ledger, one of them is our --
13 I don't remember the other two off the top of my head --

14 Q. Okay.

15 A. Sorry. Go ahead.

16 Q. I don't mean to interrupt you.

17 A. I don't recall the other three off the top of my
18 head, the exact product names.

19 Q. Would you include PowerTax in that?

20 A. I would not.

21 Q. Okay. So this sentence, when it's talking about
22 where you should expect competition from Utegration, it's not
23 mentioning PowerPlan's tax -- PowerTax software; is that
24 correct?

25 A. This doesn't mention that, no.

1 Q. Okay. Do you believe that Utegration with SAP is --
2 offers a solution that is competitive to PowerTax?

3 A. I'm not sure.

4 Q. Okay. Are you aware of any PowerPlan customer who
5 has stopped using PowerTax and started using a solution from
6 Utegration instead?

7 A. I'm not aware of that specific situation.

8 Q. Are you aware of any software solution that could be
9 used as a replacement for PowerTax?

10 A. Yes.

11 Q. What -- what solution?

12 A. So there's a -- ERP offers solution that could be a
13 potential replacement for PowerTax. Bloomberg BNA offers a
14 product. Sage offers a product. And then, there are other
15 service providers like the big four who offer their own
16 products. PWC has replaced our PowerTax product at two of our
17 customers that I'm aware of.

18 Q. Okay. Which two customers are those?

19 A. Avangrid and UIL.

20 Q. And are they -- is PWC selling a competitive software
21 product or are they just doing the work that PowerTax would
22 typically do in some other manner themselves?

23 A. I'm not sure of the exact offering, so -- I just know
24 that that's how they're --

25 Q. So your understanding is that those two customers

1 that you mentioned, Avangrid and ULI [sic], had stopped using
2 PowerTax and instead have hired PWC?

3 A. That's accurate.

4 Q. Are you aware of any PowerPlan investor-owned utility
5 customer who has stopped using PowerPlan and instead started
6 using some solution from one of the ERPs?

7 A. Yes.

8 Q. And which customers are those?

9 A. Energy Transfer has done that.

10 Q. I'm sorry?

11 A. Energy Transfer.

12 Q. Is that a rate-regulated utility?

13 A. It's a rate-regulated pipeline company.

14 Q. Do you know if they use the ARAM method for
15 calculating their deferred tax liability?

16 A. I do not know that.

17 Q. Okay. And what software solution did they start
18 using instead of PowerTax?

19 A. SAP.

20 Q. And do you know if they're using SAP to calculate
21 deferred tax liability?

22 A. I do not know.

23 Q. Okay. Has PWC signed any form of authorized vendor
24 agreement with PowerPlan?

25 A. Are you referring to the ABA document that we --

1 Q. Yeah, something like that. Has PWC entered something
2 like that?

3 A. Previously PowerPlan had a specific sort of alliance
4 agreement with PWC. That was terminated when PowerPlan was
5 acquired by Roper.

6 Q. Okay. So since the Roper acquisition, has there been
7 any formal agreement in place between PWC and PowerPlan?

8 A. There has not.

9 Q. Do you know how PWC was able to get the data that it
10 needed to replace PowerTax for Avangrid and UIL?

11 A. I do not know how they --

12 Q. Do you know whether they had accessed the PowerTax
13 database in order to extract that data?

14 A. I do not know.

15 Q. As far as you know, has PowerPlan made any threats to
16 PWC related to PWC's unlawful -- unlawful access to PowerPlan
17 intellectual property or trade secrets?

18 MR. FAZIO: Objection to form and foundation.

19 THE WITNESS: Can you repeat the question?

20 BY MR. MAYES: (Resuming)

21 Q. Sure. Has PowerPlan, to your knowledge, made any
22 communications to PWC regarding PWC's access to PowerPlan
23 proprietary information, trade secrets, or confidential
24 information?

25 A. I'm not aware of anything being communicated with PWC

1 specific to that.

2 Q. I may have already asked you this. Do you know if
3 PWC is actually selling a competitive software solution?

4 A. I do not know what their offering entails.

5 Q. Are you aware of any investor-owned rate-regulated
6 utility that has canceled PowerTax to use Bloomberg instead?

7 A. What were all of the qualifiers that you had on that?

8 Q. A rate-regulated investor-owned utility.

9 A. I don't recall that has ever happened before.

10 Q. Okay. What about Sage? Are you aware of any
11 rate-regulated investor owned utilities who have stopped using
12 PowerTax and started using Sage instead?

13 A. I am not aware of any.

14 Q. Was Bloomberg and BNA the same thing?

15 A. Yes.

16 Q. Okay. You mentioned ERPs, Bloomberg BNA, Sage, and
17 the big four accounting firms. Are there any other software
18 solutions that you're aware of that you think could be used as
19 a substitute for PowerTax?

20 A. I mean, Lucasys' marketing software in that space, so
21 I guess that was --

22 Q. Sure.

23 A. -- probably implied, but --

24 Q. Yeah, and I wasn't asking about Lucasys on the
25 others, but yeah, thank you. Are you aware of any of the other

1 big four accounting firms having done something similar to PWC
2 where they have been used as a substitute for PowerTax?

3 A. I am aware Grant Thornton has done that in the past.

4 Q. For who?

5 A. Flint Hills Resources.

6 Q. Any others?

7 A. I don't recall another specific example with Grant
8 Thornton.

9 Q. Okay. Is Flint Hills an investor-owned utility?

10 A. They are not.

11 Q. Okay. What is Flint Hills?

12 A. It's an energy company with pipelines and refineries
13 and some other stuff. I don't recall the details.

14 Q. Okay. Is it rate-regulated?

15 A. I believe they are rate-regulated pipelines.

16 Q. Are you aware of any of the other accounting firms
17 who have been used as a substitute for PowerTax by
18 rate-regulated investor-owned utilities?

19 A. I believe that there is the case -- I know we have
20 prospective customers that don't use our software that have
21 used third parties to help them with their compliance with.

22 Q. Do you know if they use software or do they just do
23 it manually?

24 A. I -- I don't know if that distinction matters, I
25 guess. I mean, from us, it's -- if they're not -- if they're

1 using any technology, whether it's a spreadsheet or other
2 things, that still is one of the competitors in the
3 marketplace.

4 Q. Okay. So is -- so the answer is you're not sure?

5 A. I'm not sure what they use and how they do it.

6 Q. As far as you know, have any of these -- the
7 accounting firms accessed PowerPlan's PowerTax databases?

8 A. What do you mean by accessed?

9 Q. Same way Lucasys would access when it was doing
10 consulting services PowerTax's database. Do the accounting
11 firms do the same thing?

12 A. I believe that the accounting firms would potentially
13 have access through customer agreements under our license
14 agreement in certain customer cases, so --

15 Q. Okay. As far as you know, have there been any
16 communications to any of those accounting firms asserting that
17 they had inappropriate access to PowerPlan trade secrets or
18 confidential information?

19 A. I'm not aware of specific communications to those
20 accounting firms.

21 Q. Are there any agreements in place -- any authorized
22 vendor agreements in place with respect to any of the big four
23 accounting firms?

24 A. Not until we have an alliance agreement. I don't
25 know if that would -- it's not in the same form as an

1 authorized vendor.

2 Q. (Unintelligible response).

3 A. Deloitte is the one that I can recall. I -- there
4 may be others.

5 Q. As you sit here, can you recall any others?

6 A. Accenture is another, I guess. I don't know if you
7 would qualify that in the accounting firm bucket, but --

8 Q. As you sit here today -- and I believe you already
9 said this -- are you aware of any facts or evidence that lead
10 you to believe that Lucasys used any trade secrets or
11 proprietary information from PowerPlan development software
12 aside from anything you've heard from counsel?

13 A. I have not been -- seen any specific evidence of
14 that.

15 Q. As far as you know, is PowerPlan still taking the
16 position set forth in its IP protection plan communications
17 that it will not consent to Lucasys accessing the PowerPlan
18 databases?

19 A. As far as I know, that's still our -- our position.
20 I believe based on ongoing litigation that our counsel may have
21 changed that, but I don't recall the exact specifics. I don't
22 recall if we've had any customer conversations to that effect.

23 Q. Okay. As far as you know, there have been no
24 communications that say we've changed our mind and we will now
25 consent to Lucasys accessing PowerPlan software; is that

1 correct?

2 A. I am not aware of any consent provided, no.

3 MR. MAYES: Why don't we take a quick break? I think
4 I may be finished.

5 VIDEOGRAPHER: Okay. At 5:09 p.m.

6 (BREAK TAKEN)

7 VIDEOGRAPHER: Back on the record at 4:20 -- or
8 excuse me -- 5:14 p.m.

9 BY MR. MAYES: (Resuming)

10 Q. Mr. Dahlby, can you confirm that during the break we
11 had no substantive discussions about the case?

12 A. I can confirm that.

13 Q. Okay. You mentioned before the break that previously
14 PWC had an alliance agreement with PowerPlan; is that correct?

15 A. Yes.

16 Q. Did that alliance agreement contain a non-disclosure
17 provision, to your knowledge?

18 A. It would have contained that.

19 Q. Did -- through the course of that alliance, did PWC
20 have access to and learn the PowerTax and PowerPlan data models
21 and structures?

22 A. I don't know what they would have learned. We did
23 not provide them with data models or data structures.

24 Q. Okay. Did PWC pursuant to that alliance agreement,
25 to your knowledge, access PowerPlan's databases and data models

1 -- excuse me -- databases?

2 A. To the extent they did, it would have been part of a
3 project with a customer with a license agreement.

4 Q. Okay. And PWC is now offering at least services that
5 compete with PowerTax; is that correct?

6 A. That's my understanding, yes.

7 Q. Okay. And you're not sure if they're offering
8 software that competes with PowerTax?

9 A. I do not know.

10 Q. Okay. Why hasn't PowerPlan taken the same sort of
11 actions that it took with respect to Lucasys to Price
12 Waterhouse Cooper?

13 MR. FAZIO: Objection to form.

14 THE WITNESS: Can you repeat the question?

15 BY MR. MAYES: (Resuming)

16 Q. Yeah. Why is it that PowerPlan has not taken the
17 same sort of actions that it took with respect to Lucasys to
18 PWC?

19 MR. FAZIO: Same objection.

20 THE WITNESS: I'm not aware of any situation that
21 we've been made aware that they had access similar to what
22 Lucasys was accessing.

23 BY MR. MAYES: (Resuming)

24 Q. They had access as part of customer projects to the
25 PowerPlan databases, correct?

1 MR. FAZIO: Objection to form and foundation.

2 THE WITNESS: I guess I'm not sure I -- I'm not sure
3 that that's happened in the same -- since they've had
4 access or since that event has occurred that they --

5 BY MR. MAYES: (Resuming)

6 Q. Oh, I see. So it's the fact that PWC had --
7 previously had had the access to PowerPlan's database as
8 opposed to having it currently; is that the distinguishing
9 factor in your mind?

10 MR. FAZIO: Objection to form.

11 THE WITNESS: I guess I'm not sure. Can you repeat
12 the question?

13 BY MR. MAYES: (Resuming)

14 Q. Sure. Yeah. So in the past, PWC through various
15 engagements had access to PowerPlan and PowerTax databases,
16 correct?

17 MR. FAZIO: Objection to form and foundation.

18 THE WITNESS: The -- they would have had access to
19 some PowerPlan through customer engagements, yes.

20 BY MR. MAYES: (Resuming)

21 Q. And those are items that PowerPlan has at least
22 contended in the past are trade secrets, intellectual property,
23 and proprietary information, correct?

24 A. Yes.

25 Q. Okay. And PWC is now competing with PowerTax,

1 correct?

2 A. I'm not sure how they're competing or if they are
3 competing with PowerTax, but they are providing a service to
4 customers.

5 Q. And some of those customers have stopped using
6 PowerTax and started using PWC instead; is that correct?

7 A. That's correct.

8 Q. And so my question is why hasn't PowerPlan taken the
9 same aggressive steps that it took towards Lucasys to PWC?

10 MR. FAZIO: Objection to form.

11 THE WITNESS: I'm not aware of any evidence that
12 would lead us to believe that they are utilizing that
13 intellectual property to build competing solutions.

14 BY MR. MAYES: (Resuming)

15 Q. You told me when I asked you earlier you didn't have
16 that evidence at the time the initial demand letter was sent
17 either; isn't that true with respect to Lucasys?

18 MR. FAZIO: Objection to form.

19 THE WITNESS: We had belief to that fact.

20 BY MR. MAYES: (Resuming)

21 Q. Okay. But at the time that the initial demand letter
22 was sent in October of 2019 to Lucasys, PowerPlan did not have
23 any knowledge of what PowerPlan even had aside from what was on
24 its website; isn't that true?

25 A. I think you just -- yeah, you said --

1 Q. I'm sorry. That Lucasys had? Let me start the
2 question again. I'm sorry.

3 At the time the initial demand letter was sent in
4 October of 2019, PowerPlan did not have any information about
5 Lucasys' software offerings aside from what was on Lucasys'
6 website; isn't that true?

7 A. Yes, that is correct.

8 Q. Okay. And you did not have any facts or evidence
9 about how that software had been developed; isn't that true?

10 A. There were similarities in the videos and other
11 information put on the website to PowerPlan intellectual
12 property.

13 Q. Okay. What were those similarities?

14 A. I believe some of those were described in the
15 original letter around data structures and such.

16 Q. Okay. But Power -- Lucasys' website didn't show its
17 data structures, did it?

18 A. I mean, it showed screens -- screens of their
19 software and what was on their website to our knowledge.

20 Q. Okay. And you're not sure how it is that PWC is
21 replacing PowerTax. You just know that they are in some way;
22 is that correct?

23 A. Yeah, just the customers canceled their PowerTax
24 software maintenance.

25 MR. MAYES: Okay. I think I'm all done, so if you

1 want to go off the record?

2 VIDEOGRAPHER: Okay. Yep. Going off the video
3 record at 5:20 p.m.

4 (BREAK TAKEN)

5 VIDEOGRAPHER: Back on the record at 5:21 p.m.

6 D I R E C T - E X A M I N A T I O N

7 BY MR. FAZIO:

8 Q. Good evening, Mr. Dahlby. Just a couple of follow-up
9 questions and clarifications. Can you pull up Exhibit 202?

10 A. Okay.

11 Q. Do you have that in front of you, sir?

12 A. I do. Yes, I do.

13 Q. And, sir, I -- I want to make sure the record is
14 clear on this. Prior to this deposition, do you have any
15 recollection of ever seeing this document previously?

16 A. I don't recall seeing this document.

17 Q. Okay. And if you flip to Page 2 of 2, do you see at
18 the bottom there it indicates that it's copyrighted in 2007?

19 A. Yes.

20 Q. Okay. Were you familiar with the products that were
21 available from PowerPlan in 2007?

22 A. I was.

23 Q. Okay. And was there a reports and query product that
24 was being -- that was part of PowerPlan's offering at that
25 time?

1 A. I would call it a feature of the overall platform,
2 yes.

3 Q. Okay. And so this was something that was -- it was a
4 feature that was built in which specific parts of the PowerPlan
5 platform?

6 A. Within the -- I mean, kind of generally across the
7 product we have like a reporting, like, layer, I guess you'd
8 call it, or like a set of reports that were available that use
9 the same reporting framework.

10 Q. Okay. And you were asked the question about whether
11 PowerPlan referred to -- referred to its system in 2007 or
12 after as a, quote-unquote, open system; do you recall that?

13 A. That was what this document referred -- one of the
14 ways it referred to it, yes.

15 Q. Okay. And other than this document, do you have any
16 recollection of PowerPlan referring to its product as an open
17 product?

18 A. No.

19 Q. Now, sir, you were asked some questions about a
20 couple of specific customer meetings and I want to make sure
21 the record is clear on it. Now, sir, were you following --
22 there was a meeting with AEP at some point to discuss
23 PowerPlan's concerns around protecting its intellectual
24 property vis-à-vis Lucasys; do you recall that?

25 A. Yes.

1 Q. Okay. And did you personally participate in that
2 meeting?

3 A. I did.

4 Q. Okay. Who else from PowerPlan participated in that
5 meeting?

6 A. Brett Burts and Jonathan Suture.

7 Q. Okay. And this was on a -- this was a telephone
8 call?

9 A. Yes.

10 Q. Okay. And who from AEP was present at that meeting?

11 A. I recall Jimmy Lindy and Jeff Horsted. I don't
12 recall who the others were. I believe there were others, but I
13 don't recall.

14 Q. Okay. And did you speak at that meeting?

15 A. I believe I -- yes, I spoke.

16 Q. Okay. And what did you say at the meeting?

17 A. I believe I might have given an example around other
18 software companies. Like, Oracle wouldn't allow SAP or vice
19 versa, something to that effect. Do consulting while they were
20 in their -- deep in their products.

21 Q. And, sir, at that meeting, did you hear anybody from
22 Power -- well, first of all, did -- at that meeting, did you
23 personally say to AEP that Lucasys was affirmatively
24 misappropriating its intellectual property? Did you make that
25 statement?

1 A. No.

2 Q. Okay. Did you hear anybody from the PowerPlan side
3 of that call make such a statement?

4 A. No.

5 Q. Okay. With respect to AEP, are you aware of anybody
6 from PowerPlan ever making such a statement?

7 A. I'm not aware.

8 Q. Okay. NextEra, were you part of the conversations
9 with NextEra around PowerPlan's concerns about protecting its
10 intellectual property vis-à-vis Lucasys?

11 A. I was on a phone call with NextEra, yes.

12 Q. Okay. Do you know other than the phone call that you
13 were on, were there any other calls?

14 A. I don't recall if there were other specific calls or
15 not.

16 Q. Okay. And who was on the NextEra call from on the
17 PowerPlan side of it?

18 A. The one I participated in, it was Brett Burts and
19 Jonathan Suture.

20 Q. And you?

21 A. Yes.

22 Q. Okay. And -- and who participated on the NextEra
23 side?

24 A. I believe it was Leo Quintana, and I believe Jim May
25 may have been on. I can't recall if he was on or not, but he

1 was invited.

2 Q. Okay. Do you recall if anybody else participated in
3 that meeting --

4 A. (Unintelligible) invited, I don't recall.

5 Q. Okay. Let's just --

6 A. Sorry.

7 Q. Let me finish asking before you start answering. And
8 so on that -- in that call, did you say anything?

9 A. I don't believe I said anything in that call.

10 Q. Okay. In that call, do you recall anybody from
11 PowerPlan ever saying to anybody from NextEra that Lucasys was
12 affirmatively misappropriating PowerPlan's intellectual
13 property?

14 A. No.

15 Q. Were you part of any of the discussions with the
16 folks at Liberty?

17 A. I was not.

18 Q. Okay. And how about at Suez? Were you -- did you
19 participate in any of those communications?

20 A. I believe I was on a call when they were discussing
21 project timelines and scope, but not the discussion around
22 intellectual property.

23 Q. Okay. So with respect to Liberty and Suez, you
24 didn't have any -- you didn't participate in either of those
25 calls?

1 A. That's correct.

2 Q. Okay. As you sit here today, are you aware -- so
3 prior to -- setting aside what has been said in the litigation
4 in terms of PowerPlan's communications with the market, are you
5 aware of any communications in which somebody from PowerPlan
6 made a statement to the PowerPlan customer that Lucasys was
7 affirmatively misappropriating intellectual property?

8 A. No.

9 Q. Have you ever seen a document that indicates that?

10 A. I have not.

11 Q. Have you ever had a customer -- a PowerPlan customer
12 report to you that somebody from PowerPlan said that to you?

13 A. I have not had that reported to me.

14 Q. Now, sir, you were involved in what's been referred
15 to as the agreed process; do you recall that?

16 A. Yes.

17 Q. Okay. And so you had some access to information
18 concerning Lucasys' software development activities as of the
19 time that the agreed process was ongoing?

20 A. Yes.

21 Q. Okay. And you understood that you had
22 responsibilities to maintain the confidentiality of that
23 information?

24 A. Yes.

25 Q. Okay. And you've discharged those obligations?

1 A. Yes.

2 Q. Okay. And you -- do you have an understanding as to
3 whether Lucasys has provided further access to its software
4 solutions as part of the litigation that's ongoing?

5 A. I was told that through legal counsel.

6 Q. Okay. And I want to get to the communications around
7 that, but I want to ask you as part of the litigation, have you
8 had access to or seen any information about Lucasys' software
9 development activities? Have you seen their source code?

10 A. No.

11 Q. Okay. Have you seen anything about their -- the data
12 structures they're implementing?

13 A. No.

14 Q. Okay. Their development -- anything about their
15 development efforts at all?

16 A. No.

17 Q. Have you seen any Lucasys documents at all that have
18 been produced as part of the litigation?

19 A. No.

20 Q. Now, sir, when you -- so you were asked with respect
21 to Exhibits 217 and 219 when you had verified the
22 interrogatories -- the interrogatory responses that had been
23 served in this case?

24 A. Yes.

25 Q. Okay. When you signed those interrogatory responses,

1 did you -- you didn't -- did you personally go about
2 investigating the answers to each and every response that was
3 included in the responses to the first and second set of
4 interrogatories?

5 A. I did not investigate every one of those in detail.

6 Q. Okay. So you were comfortable at the time that you
7 signed those verifications that the statements that were made
8 were true and accurate as the information was available at the
9 time?

10 A. Yes.

11 Q. You were asked -- can you pull up Exhibit 227?

12 A. Yeah.

13 Q. Okay. So you were -- you were asked some questions
14 about this communication from Jamie Carr concerning a PowerPlan
15 employee named Yulu; do you recall that?

16 A. Yes.

17 Q. So in -- this was sent in February -- on
18 February 16th, 2021; do you see that?

19 A. Yes.

20 Q. Okay. And on February 16th, 2021, how many
21 consultants were in the professional services organization at
22 PowerPlan?

23 A. Somewhere in the 150 range.

24 Q. Okay. And so this person, Yulu, what was her
25 position?

1 A. She was a consultant within the tax group.

2 Q. Okay. And how long had she worked at PowerPlan as of
3 February 2021; do you know?

4 A. I don't know the specifics.

5 Q. Was she considered a relatively junior employee?

6 A. She would have been.

7 Q. Okay. The situation, does she -- does Yulu still
8 work at PowerPlan?

9 A. She does not.

10 Q. Okay. And when did she leave PowerPlan?

11 A. I believe sometime last year. I don't recall the
12 exact dates.

13 Q. Do you -- I'm sorry. Were you done answering?

14 A. Yeah. I don't recall the date when she left.

15 Q. And do you know anything about the circumstances of
16 her departure?

17 A. I just know it was voluntary.

18 Q. The situation that is being reported by Mr. Carr in
19 the February 16th, 2021 e-mail with respect to Liberty, do you
20 have any understanding as to how the situation was resolved?

21 A. I mean, so he was -- the person he was communicating
22 with is Jason Celeste (ph). He would have been the practice
23 lead within the tax practice, so I think he was -- the way I
24 read this is Jamie was communicating concerns about one of the
25 employees and her performance. I don't know how it was

1 resolved.

2 Q. And to be clear, when I ask how it was resolved, is
3 it -- I'm asking about how it was resolved with respect to the
4 customer; do you have any understanding as to that?

5 A. Oh, yeah. I mean, my understanding is the customer
6 is satisfied with what the current implementation efforts that
7 are going on, so --

8 Q. And are there ongoing implementation efforts at
9 Liberty right now?

10 A. There are.

11 Q. Okay. And tell me about those. What's going on at
12 Liberty currently?

13 A. They're -- as was described earlier, they're in a
14 multi-release cycle and they're -- I believe they're working on
15 release three, maybe release two something, but I believe it's
16 release three they're kind of working on. Probably four or
17 five releases, so --

18 Q. Sir, you -- you were asked a couple of questions
19 about what was known to you at various points in time
20 concerning the potential for Lucasys having misappropriated the
21 intellectual property of PowerPlan. Do you remember those
22 questions?

23 A. Yes.

24 Q. Now, with respect to what you personally knew at
25 various points in time, you were again part of the agreed

1 process, true?

2 A. Yes.

3 Q. So to the extent that you knew any specific facts,
4 those facts would have come to you through the agreed process
5 or through counsel, true?

6 A. Yes.

7 MR. MAYES: Object to the form of the question.

8 BY MR. FAZIO: (Resuming)

9 Q. Okay. And to the extent that there were
10 communications that came out of the agreed process, those --
11 going back to Lucasys, those communications came from outside
12 counsel?

13 A. Yes.

14 MR. MAYES: Object to the form of question.

15 BY MR. FAZIO: (Resuming)

16 Q. So it was not -- and your understanding of your role
17 in that was not to -- you didn't have a role communicating what
18 you thought the -- what a potential misappropriation may have
19 been based on what you knew?

20 MR. MAYES: Object to the form of the question.

21 THE WITNESS: That's correct.

22 BY MR. FAZIO: (Resuming)

23 Q. Sir, the authorized vendor agreement that we were
24 talking about earlier, Exhibit 226 --

25 A. Yes.

1 Q. Okay. This was -- this related to -- it was an
2 agreement between PowerPlan and RCC and it was related to work
3 you had done at PPL Services Corporation?

4 A. That's correct.

5 Q. Okay. As far as you know, RCC has been performing
6 services for PPL pursuant to the ABA?

7 A. Yes.

8 Q. Has there been any -- to your knowledge, has
9 PowerPlan raised any concerns about how RCC has operated under
10 the authorized vendor agreement?

11 A. No concerns that I'm aware of.

12 Q. Okay. And as far as you know, has RCC raised any
13 concerns with you about your ability to discharge -- to
14 discharge their consulting services to PPL under the ABA?

15 A. No.

16 Q. Okay. Have they had come back to you and ask for
17 greater access?

18 A. They have not.

19 Q. Under this -- under the ABA for PPL?

20 A. They have not.

21 Q. Have they expressed any concerns at all with respect
22 to the ABA since you entered into it?

23 A. Not with respect to the ABA.

24 Q. Okay. And I think you mentioned that PowerPlan is
25 also providing services to PPL simultaneously?

1 A. Not currently. I mean, I think there is a project
2 that's currently ongoing that PowerPlan and RCC are involved
3 with. There's -- but there is also a project that is not
4 PowerPlan and professional services is not involved in.

5 Q. Okay. So the project that RCC and PowerPlan are
6 working on, are they working on it in collaboration? Can you
7 explain to me what that project is?

8 A. Yeah. It's an ongoing project going on for several
9 months. I don't know when it exactly started, but I believe
10 they were going live and cutting over as it relates to that
11 project here in the last few -- few weeks. And so our team, we
12 have people involved and they have people involved, and the two
13 are collaborating based on our -- each of us has an individual
14 contract with the customer as to what our responsibilities are
15 within that project.

16 Q. Okay. And so when you say that you're working --
17 sort of working in parallel, you each have agreements with the
18 customer. You're each doing your job (unintelligible) the
19 customer, and that requires some coordination between the two?

20 A. That's correct.

21 Q. So you were asked a question about PowerPlan's core
22 customer base. I think that was the expression that was used.
23 Can you describe for me the customers that PowerPlan focuses on
24 just generally?

25 A. Yes. So our -- if we talked about our core markets,

1 we would talk about North American Energy, which would include,
2 you know, oil and gas, include municipals and coops, as well as
3 investor-owned utilities.

4 Q. And, sir, the product mix that -- that PowerPlan
5 brings to those customers, can you put into context for us sort
6 of the role -- how much -- how many of those customers -- or
7 what's -- actually, strike all of that.

8 Sir, let's go back to the -- some of the Lucasys
9 questions for a second. You -- I think you said this a couple
10 of times, but I want to make sure that it's clear on the
11 record. From your perspective, was the concern -- what was the
12 concern about Lucasys having access to PowerPlan's -- what was
13 your concern about Lucasys having access to PowerPlan's systems
14 while they were developing the product?

15 A. So the primary concern is around their ability to
16 take intellectual property and use it to develop their
17 products, and so whether that's the data structures or other --
18 other components. Another concern I have personally is we
19 don't have a way to govern if they provide services in a manner
20 that always has our customer's best interest in mind. So there
21 is a potential -- I am not saying that they have done this, but
22 there is a potential where they could set up their software, so
23 the PowerPlan software in a way that would, you know, create it
24 advantageous for Lucasys' software at some point in the future.

25 Q. And, sir, were you -- so PowerPlan also has to

1 provide support services to its customers, true?

2 A. That's correct.

3 Q. Okay. And so if Lucasys was doing work on
4 PowerPlan's software, how would that impact the provision of --
5 the support function by PowerPlan, or how could it?

6 A. Can you repeat the first part of that?

7 Q. Yeah. So when Lucasys -- if Lucasys is doing work
8 for one of PowerPlan's customers, does it implicate PowerPlan's
9 support obligations to that customer?

10 A. So under our support agreement, you know, our
11 customers will call us for maintenance fixes or they may call
12 us to ask support questions. And so if Lucasys was doing
13 consulting, we would know what they did or how they did it, in
14 which case it could -- you know, and had they modified
15 something about the software or done something for our
16 customers that we don't know about.

17 Q. And so how would that impact your support obligations
18 to your customers, or how could it?

19 A. I mean, we'd have to investigate to determine that
20 maybe the software wasn't performing well, not because of the
21 software, but because of something that was done by Lucasys.

22 Q. And, sir, when -- you were asked a series of question
23 about the letters that went out as part of -- that went out to
24 certain customers where PowerPlan was expressing its view that
25 it would -- it was not going to permit Lucasys access to our

1 software on a go-forward basis. Do you remember those
2 questions?

3 A. Yes.

4 Q. And at the time that those letters were going out,
5 did you have any -- did you have a view as to whether -- did
6 you have any concern about whether those letters were
7 accurately expressing PowerPlan's position vis-à-vis Lucasys?

8 A. I didn't have any concerns at the time.

9 MR. FAZIO: All right. That's all I have.

10 MR. MAYES: Okay. I've got a few more.

11 VIDEOGRAPHER: Okay. Do you want to go off the
12 record?

13 MR. MAYES: Yeah.

14 VIDEOGRAPHER: Okay.

15 MR. MAYES: It's going to take a second. I'm going
16 to have to dig out a couple documents.

17 VIDEOGRAPHER: All right. Off the record at
18 5:41 p.m.

19 (BREAK TAKEN)

20 VIDEOGRAPHER: Back on the record at 5:43 p.m.

21 R E C R O S S - E X A M I N A T I O N

22 BY MR. MAYES:

23 Q. Mr. Dahlby, can you confirm that you and I did not
24 have any substantive discussions during the break?

25 A. I can confirm.

1 Q. Do you call Mr. Fazio just asked you whether or not
2 you had seen any documents in which PowerPlan affirmatively
3 represented that Lucasys had misappropriated trade secrets?

4 A. Yes, sir. I don't recall.

5 Q. And you said you had not seen a document like that?

6 A. I don't recall seeing that.

7 (Plaintiff's Exhibit No. 232 was marked and identified.)

8 BY MR. MAYES: (Resuming)

9 Q. I'm handing you Exhibit 232. This is an e-mail from
10 Brett Burts to Rob Kleczynski on February 17th, 2020. Take a
11 look at this and tell me if you've ever seen this before.

12 A. I don't recall seeing this, no.

13 Q. Okay. I want you to look at the second paragraph.
14 The second sentence says, "Recently, we've identified that
15 there was a third party working with some of our customers
16 delivering services on the PowerPlan software that we have
17 strong reason to believe is using access to our intellectual
18 property to build competitive offerings." Did I read that
19 correctly?

20 A. You read that correctly.

21 Q. Okay. You understand that third party to be
22 referring to Lucasys, correct?

23 A. I believe that's the case, yes.

24 Q. And you would agree with me that this does not say
25 you have concerns; this says you have strong reason to believe

1 Lucasys is using access to the intellectual property to build
2 competitive offerings, correct?

3 A. That's what it states.

4 Q. Okay. And rob Kleczynski is a PowerPlan customer,
5 correct?

6 A. That is correct.

7 Q. Okay. And do you have any reason to think that Brett
8 Burts did not make similar statements during calls with other
9 customers at PowerPlan?

10 MR. FAZIO: Objection to form and foundation.

11 THE WITNESS: I don't have any --

12 MR. FAZIO: Calls for speculation.

13 THE WITNESS: I was going to say I don't have -- I
14 was not witness that I recall anything that would have
15 been in that form.

16 BY MR. MAYES: (Resuming)

17 Q. Did you ever discuss anything that you had learned as
18 part of the agreed-upon process with Mr. Burts?

19 A. I did not.

20 Q. Okay. Mr. Burts was not part of the agreed-upon
21 process, correct?

22 A. He was not.

23 Q. Okay. And if Mr. Burts testified that as of the same
24 exact date, July 17th, 2020, he did not have any facts or
25 evidence showing that Lucasys had misappropriated and used

1 trade secrets or confidential information of PowerPlan to build
2 competitive software, that would be true as far as you know,
3 correct?

4 MR. FAZIO: Objection to the form and foundation.

5 THE WITNESS: Can you repeat the --

6 BY MR. MAYES: (Resuming)

7 Q. Sure. Yeah. If Mr. Burts said that on the same
8 date, July 17th, 2020, he wasn't aware of any facts or evidence
9 that Lucasys had misappropriated trade secrets to build its
10 software, that would be true as far as you know, correct?

11 MR. FAZIO: Objection to form and foundation.

12 THE WITNESS: Yeah. What I had seen at the time, I'm
13 not aware of that information.

14 BY MR. MAYES: (Resuming)

15 Q. Okay. You were asked some questions about Yulu; do
16 you recall that by Mr. Fazio?

17 A. Yes.

18 (Plaintiff's Exhibit No. 233 was marked and identified.)

19 BY MR. MAYES: (Resuming)

20 Q. I'm handing you Exhibit 233. He asked you about
21 whether or not Yulu was just one of many PowerPlan consultants;
22 do you recall that?

23 A. Yes.

24 Q. This is an e-mail from Mr. Duffy sent to Mr. Burts
25 and some other folks in July of 2021, and I want you to look at

1 the paragraph -- the fourth paragraph down on Exhibit 233 of
2 Mr. Duffy's e-mail, which is on the first page. It begins, "If
3 I was carrying an RCC business card." Do you see that
4 paragraph?

5 A. Yeah.

6 Q. Do you see that?

7 A. Yes.

8 Q. Okay. And Mr. Duffy says, "If I was carrying an RCC
9 business card, I would be screaming this UPCO story as loud as
10 I could to as many utilities as I could. Don't you dare buy
11 PowerPlan cloud because you will be stuck with their
12 professional services going forward, and they will charge you
13 30 percent more for less experienced resources and lower value
14 services." Did I read that correctly?

15 A. You read that correctly.

16 Q. Do you believe that PowerPlan charges 30 percent more
17 for less experienced resources and lower value services than
18 RCC?

19 MR. FAZIO: Objection to form.

20 THE WITNESS: I don't have any knowledge of what RCC
21 charges.

22 BY MR. MAYES: (Resuming)

23 Q. Okay. Do you believe that RCC charges less than
24 PowerPlan for services?

25 A. I don't necessarily believe that.

1 Q. Okay. Mr. Duffy is in sales, correct?

2 A. He is, yes.

3 Q. Or was at the time of this, correct?

4 A. Yes.

5 Q. Okay. And he was a vice president?

6 A. He was.

7 Q. And do you think he would have reason to have found
8 out what RCC was charging for professional services?

9 A. I don't believe that he would -- I've never been
10 aware that he had that information.

11 Q. Mr. Fazio asked you about risks with Lucasys
12 providing services to PowerPlan customers; do you recall that?

13 A. Yes.

14 Q. And I want to make sure I fully understood your
15 answer. You believed there was a risk that Lucasys might
16 sabotage the implementation so that they could sell software to
17 those customers in the future; did I understand that correctly?

18 MR. FAZIO: Objection to the form; misstates.

19 BY MR. MAYES: (Resuming)

20 Q. That's what I'm trying to find out. Is that what you
21 were saying?

22 A. I did not say that they would sabotage.

23 Q. Okay. Was that the implication of your answer?

24 MR. FAZIO: Objection to form.

25 THE WITNESS: There is a risk that they could set it

1 up in a manner that's not as efficient for PowerPlan as it
2 might be for what their software building is. That's a
3 risk we don't know. I have not been made aware that that
4 has happened, but that is a risk that is possible.

5 BY MR. MAYES: (Resuming)

6 Q. Okay. Would you not describe that as sabotage if
7 they're setting up less efficiently in order to be able to
8 later sell their own software?

9 MR. FAZIO: Objection to form.

10 THE WITNESS: I wouldn't describe that as sabotage.

11 BY MR. MAYES: (Resuming)

12 Q. Okay. How would you describe it? Would it be for
13 carelessness or mistake?

14 A. Like I said, it's a risk that could happen, so I -- I
15 would describe it as a concern we had, so --

16 Q. Okay. Are you aware of that ever, in fact,
17 happening?

18 A. I'm not aware of that.

19 Q. Did you communicate that concern to any customers?

20 A. I don't recall communicating that concern directly to
21 our customers.

22 Q. Okay. Do you know if anyone else at PowerPlan
23 communicated that concern to any PowerPlan customers?

24 A. I do not know.

25 MR. MAYES: That's all I have. Thank you for your

1 time, Mr. Dahlby.

2 MR. FAZIO: Nothing further. Thank you.

3 MR. MAYES: Off the record.

4 VIDEOGRAPHER: Okay. Counsel, before we go off the
5 record, would you like to order your video synced or
6 unsynced with the transcript?

7 MR. MAYES: We wait until later to order video.

8 VIDEOGRAPHER: Oh, okay. You have a standing order
9 probably.

10 MR. MAYES: We basically make the decision later on
11 if it looks like we're going to go to trial.

12 VIDEOGRAPHER: Got it. Perfect.

13 MR. MAYES: And we will -- we would like a rush, like
14 a rough draft transcript. Or yeah, not a rush. Sorry,
15 just a rough draft.

16 VIDEOGRAPHER: Okay.

17 MR. FAZIO: Same for us, please.

18 VIDEOGRAPHER: And if there's -- if we're all in
19 agreement, then this concludes Mr. Dahlby's deposition on
20 August 5th, 2022. Going off the record at 5:51 p.m.

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D I S C L O S U R E

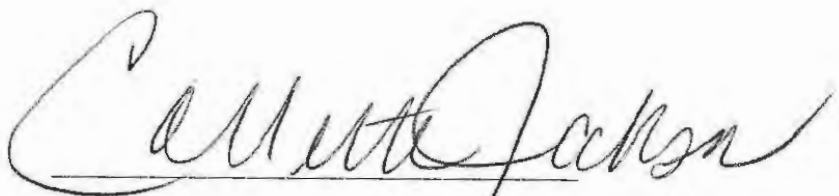
STATE OF GEORGIA DEPOSITION OF JIM DAHLBY
COUNTY OF HENRY AUGUST 5, 2022

Pursuant to Article 8.B of the rules and regulations of the
Board of Court Reporting of the Judicial Council of Georgia, I
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I, Collette Jackson, am a Georgia Certified Court Reporter. I
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AUGUST 5, 2022



COLLETTE JACKSON, OCR
No. 5741-5233-4639-1040
CERTIFIED COURT REPORTER

C E R T I F I C A T E

STATE OF GEORGIA

COUNTY OF HENRY

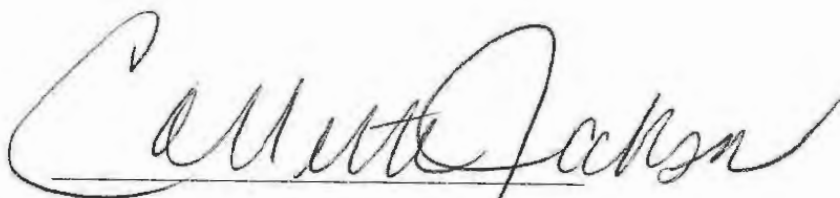
I COLLETTE JACKSON, Certified Court Reporter for the
County of Henry and for the State of Georgia, do hereby
certify:

That the foregoing transcript is a true and accurate
account of evidence and testimony taken by me in the matter of
LUCASYS, INC. versus POWERPLAN, INC., to the best of my
ability.

I further certify that the foregoing pages 7 through 238
of testimony represent a true and correct record of the
evidence given upon said plea;

And I further certify that I am not a relative by blood or
marriage, or an employee of attorney or counsel of any of the
parties in the case, nor am I financially or in any way
interested in the outcome of the action.

This, AUGUST 18, 2022



COLLETTE JACKSON, OCR
No. 5741-5233-4639-1040
CERTIFIED COURT REPORTER

Notice Date: 08/19/2022

Deposition Date: 8/5/2022

Deponent: Jim Dahlby

Case Name: Lucasys Inc. v. Powerplan, Inc.

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CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

Signature of Deponent

I hereby certify that the individual representing himself/herself to be the above-named individual, appeared before me this ____ day of _____, 20__, and executed the above certificate in my presence.

NOTARY PUBLIC IN AND FOR

County Name

MY COMMISSION EXPIRES:

WORD INDEX

< \$ >

\$100,000 19:17**\$125,000** 19:18

< 0 >

001 133:13**002891** 133:14**009088** 142:12

< 1 >

1 49:5 105:24 137:10
140:1**1.25** 171:20**1:00** 101:11**1:10** 118:14**1:20-cv-2987-AT** 1:7 6:5**10/5/20** 118:13**10:28** 70:17**10:29** 41:9**10:31** 72:15**10:45** 56:4**10:57** 56:9**100** 4:12 21:7**101** 4:13**102** 4:14**105** 4:15**109** 4:16**11** 126:2, 7**11/19** 180:6, 13, 20**11:20** 42:8**11:21** 166:7, 10**110** 4:17**111** 4:18**118** 4:19**119** 4:21, 22, 23**12** 31:10 126:2 165:11**12:00** 93:12**12:13** 93:17**12:30** 101:7**120** 4:24, 25**125** 19:16, 18**127** 2:11**129** 5:1**12th** 69:13**148** 5:2**14th** 1:16 2:5 176:9**15** 3:16 7:9 93:13**150** 223:23**15-14-37** 239:17**152** 5:3**161** 5:4**166** 5:5**16th** 223:18, 20 224:19**17** 117:13**174** 129:24 130:7, 21**177** 5:6**17th** 94:19 232:10

233:24 234:8

18 134:12, 16, 25 136:5
240:20**181** 5:7**186** 5:8**188** 15:11, 13**189** 5:9 19:9, 11**19** 3:17 73:4 121:11, 21

122:1 133:1, 5, 9, 12

137:6 146:12

190 38:16, 18**191** 40:13, 15, 18 43:22**192** 45:9, 11**193** 47:6, 8**194** 5:10 48:21, 23**195** 52:3, 5 56:16**196** 58:16, 18**197** 64:15, 17, 22**198** 5:11 68:7, 9, 16, 25

69:10, 23

199 5:12 73:6, 10, 24

74:2, 4, 16

1997 8:24**19th** 52:22

< 2 >

2 186:10 216:17**2/19** 166:16**2:14** 124:21**2:34** 198:13**20** 22:2 103:13**200** 73:6, 11, 18, 23**2001** 9:20**2006** 36:9**2007** 216:18, 21 217:11**200787** 97:11**2008** 36:9 92:7, 20**201** 76:1, 3 81:4 86:24

87:10, 19, 21, 23

201,9 30:11**2010** 12:12 20:22 24:10

27:9, 18, 23 31:6 34:25

35:8

2018 38:14, 23 39:22

197:17

2019 31:12 41:3 46:21

47:12 52:12 58:11, 25

59:7 66:21 69:17 88:15

123:14 146:5 149:3

152:11 164:18, 20

165:19 167:1, 6 169:23

171:19 172:10 174:13

175:25 176:9 178:12

181:13 194:25 195:24

197:17 214:22 215:4

202 92:3, 5, 11 216:9**2020** 35:14 68:13 69:13

70:17 73:4 88:11, 15

94:20 100:9 110:3

117:9 142:11 143:3, 23

144:10 189:6, 12 198:10

232:10 233:24 234:8

2021 158:25 159:6, 11

161:15, 21 177:18

189:10 190:14 223:18,

20 224:3, 19 234:25

2022 1:15 6:2 134:23

135:9 143:1, 3 146:8

238:20 239:5, 18 240:20

203 94:1, 3, 11**204** 95:10, 12**205** 97:2, 4, 12**206** 98:23, 25**207** 100:2, 4**208** 102:5, 7 103:17, 20**209** 103:11, 14 105:18**20th** 70:17**21** 121:4, 5**210** 105:11, 13, 24

107:18

2100 8:19**211** 109:21, 23**212** 110:10, 12, 13**213** 111:17, 19**214** 118:3, 5**215** 119:5, 7 121:2, 3, 12

122:4 127:11, 14

216 119:17, 19, 20 120:4

122:22, 24 126:2

216-479-8403 2:12**217** 119:22, 24 120:1

222:21

218 120:12, 15, 23

132:25 133:2 140:18

219 120:12, 16, 20

222:21

22 121:8**220** 129:1, 3, 20 134:17**221** 148:5, 7, 15 176:2**222** 152:16, 18 154:6

155:11, 12, 16

223 161:7, 9**224** 166:1, 3 176:12**225** 177:12, 14 179:10

180:6

226 181:24 182:1

226:24

227 186:3, 5, 10 223:11**228** 189:22, 24**229** 194:17, 20**22nd** 41:9**23** 122:4 196:16**230** 198:4, 6, 14**231** 199:25 200:2, 7**232** 5:13 232:7, 9**233** 234:18, 20 235:1**234** 5:14**238** 240:13**239** 3:8**240** 3:9**241** 187:14 188:11**24-ish** 196:16**25** 129:24 130:7**27** 121:12**27th** 177:22**2891** 137:10 140:1**2892** 140:2**293** 68:19**29th** 134:23 135:9

< 3 >

3 74:6 76:14 182:18**3(a)** 180:12**3/20** 69:11**3:23** 69:11**3:38** 164:12**3:43** 177:22**30** 123:14 235:13, 16**300** 8:18**30066** 8:20**30318** 1:17 2:5**30339** 8:19**313K** 173:16**3291** 8:20**36** 49:25 50:8, 20 51:15

127:13

37 127:13**38** 3:18

< 4 >

4 78:17**4:09** 52:21**4:20** 211:7**4:28** 194:6**4:41** 194:8**40** 3:19 22:6, 7**408958** 177:20**411** 130:3, 16 134:19**413007** 166:10**429K** 173:16**44114** 2:12**45** 3:20**47** 3:21**48** 3:22**4900** 2:11

< 5 >

5 1:15 81:4 82:11

86:24 87:21 239:5, 18

5:09 211:5**5:14** 211:8**5:20** 216:3**5:21** 216:5**5:41** 231:18**5:43** 231:20**5:51** 238:20**500** 1:16 2:5**52** 3:23**53** 127:12 129:14**55** 127:13, 16, 20**5741-5233-4639-1040**

239:21 240:24

58 3:24
5th 6:2 238:20

< 6 >

6 87:23 129:12, 14, 20
64 3:25
678-701-9381 2:6
68 4:1
6th 69:11

< 7 >

7 76:24 77:9 122:24
240:13
7:25 47:15
73 4:2, 3
750 19:16
76 4:4
770)937-3002 8:22

< 8 >

8.B 239:7
871 140:2

< 9 >

9 82:7
9:30 1:17
9:35 6:2
904 182:12
9089 140:19
92 4:5
94 4:8
9423 140:19
95 4:9
97 4:10
98 4:11

< A >

a.m 1:17 6:2 47:15
56:9 70:17
ABA 205:25 227:6, 14,
19, 22, 23
abbreviation 157:23
abide 74:13
ability 8:10, 13 38:4
159:8 165:7 227:13
229:15 240:12
able 23:23 86:17 90:7
106:14, 18 107:13, 21
114:9 131:24 160:2
172:25 179:17 181:6
183:25 206:9 237:7
Accenture 210:6
acceptable 186:1
access 25:15, 16 32:20
53:21 55:8, 11 57:8
59:18 60:2 61:23 62:2,
4, 17, 21 63:5 64:1, 5
66:15, 23 70:1, 23 78:11
79:7 91:2, 5, 13 93:2, 6
98:6 106:10 113:3, 9, 11,
15, 16 115:24 116:3

153:24 159:9, 12, 17
160:6 162:10 164:23
178:1, 22 179:1, 18
181:1, 7 182:18, 23
183:2, 4, 6, 8 190:21
191:10 206:16, 22 209:9,
13, 17 211:20, 25 212:21,
24 213:4, 7, 15, 18
221:17 222:3, 8 227:17
229:12, 13 230:25
232:17 233:1
accessed 206:12 209:7, 8
accessible 139:13
140:13 141:7, 16, 23
accessing 25:9 32:6, 12
35:12 60:4 61:18 65:19
70:4 153:23 156:2
210:17, 25 212:22
accident 7:7
accomplish 49:9 50:23
51:11
account 95:6, 8 141:5, 6,
16 142:10 143:9 200:10
240:10
accounting 18:7 46:18
47:22 200:22 201:2, 5
207:17 208:1, 16 209:7,
10, 12, 16, 20, 23 210:7
accounting-related 201:6,
9
accounts 13:17 142:11
143:18 144:1
Accufile 17:3, 6, 10, 13,
16
accuracy 123:2 134:24
135:6
accurate 8:6 51:17
66:20 67:8 76:24 81:21
120:4 134:7, 9 141:1, 18
143:9 150:9, 14 159:21
165:17 178:17, 20 179:1
184:20, 21 185:7 205:3
223:8 240:9
accurately 8:13 231:7
achieving 173:1
acknowledge 23:14
acquired 206:5
acquisition 17:15 206:6
acronym 42:12 44:5
action 95:22 101:5
152:3 240:19
actions 96:15 212:11, 17
actively 67:13 173:15
activities 9:24 12:1
25:5, 13 196:10 221:18
222:9
activity 25:4
actual 179:14
add 139:17
added 45:21 46:12

110:6, 8 112:13
addition 19:22 105:6
additional 63:19 139:17,
20 164:3
address 8:15, 16, 18, 19
admitted 187:24
admonition 81:14
adopt 18:8
advantage 90:12
advantageous 229:24
advice 37:12 193:10
advisory 148:21 168:18
AEP 4:17 42:10, 13, 17
43:3 46:21 47:18, 25
48:5, 12, 16 49:1, 6, 7, 18
50:24 51:9, 12, 14 52:11
59:14 60:1, 17, 18, 19, 23
61:8, 12 62:18 63:4, 11,
16 64:19, 24 70:24
74:10 109:18 110:6, 16,
19 170:3 217:22 218:10,
23 219:5
AEP's 62:23 71:4 72:9
affect 57:1, 3
affiliated 21:7
affirm 6:17
affirmatively 218:23
220:12 221:7 232:2
afford 191:17
afraid 184:5
AGA 71:5 167:22
168:1, 2, 20
aggressive 150:21
155:10, 17 214:9
ago 7:8, 9 31:10 32:19
36:5 45:19 58:22 64:20
115:12 134:18
agree 39:17 44:10
45:24 86:3 90:5 94:12
201:13 232:24
agreed 68:5 88:17
94:13, 16, 20 124:7, 15
125:6, 9, 18 192:14
221:15, 19 225:25 226:4,
10
agreed-upon 72:25
233:18, 20
AGREEMENT 5:7
25:25 26:1, 4, 8, 10, 18,
25 27:6, 17, 18, 23 32:17,
22, 25 33:2, 11, 14 36:13,
18 60:4 66:12, 24 67:12
79:16 91:6, 17 96:2
154:2 180:19, 23 181:9,
21 182:5, 8, 25 183:25
184:11 185:4, 9, 12, 17,
19, 25 190:8, 17 194:1
205:24 206:4, 7 209:14,
24 211:14, 16, 24 212:3
226:23 227:2, 10 230:10
238:19

agreements 21:12 32:10
35:14 37:25 91:17
93:10 101:23 154:4
156:12 184:5 209:13, 21,
22 228:17
ahead 33:3 41:24 78:2
81:14 85:2 117:2
121:15 122:4, 11, 24
126:2 133:3 203:15
Alabama 14:15
alcohol 8:9
Alex 200:17, 18
Algonquin/Liberty 94:25
95:17 96:2
aligning 108:15
allegation 127:23
alliance 206:3 209:24
211:14, 16, 19, 24
alliances 11:3, 8 161:15,
17 165:20
allow 37:24 137:2
159:16 178:7, 25 218:18
allowed 63:5 136:22
182:9
Alloy 1:16 2:4 6:6, 7, 11
Alpharetta 14:24
alter 79:9 182:19
alternative 98:4
alternatives 98:14 149:7,
12
amend 128:14
America 201:21
American 42:12 175:3
229:1
amount 107:17 141:20
Amwater 170:3 173:16
Amy 57:17
analyses 88:4
analysis 82:18 136:22
171:19 172:3
and/or 137:13 139:2
142:8, 9, 19, 23 143:16,
24
Andrews 30:20
announcement 38:11
annual 23:15, 17 24:7
answer 7:15, 18 8:3
22:16 45:20 75:10
77:16, 19 78:2 79:17
81:12 82:20, 22 83:1
84:25 85:2, 3, 13 86:17
107:25 122:12 124:14
125:20 128:2 129:6
134:13 135:13, 22 136:9,
14, 16 137:3 138:5
139:5 154:15 167:14
187:23 192:11 209:4
236:15, 23
answered 107:8, 24
answering 128:21 192:4
220:7 224:13

answers 8:7 120:4, 7
223:2
anticipate 167:21
anybody 218:21 219:2,
5 220:2, 10, 11
anymore 184:6
anyway 194:20
app 139:18, 21 140:2
appear 15:18 68:16, 25
99:7 148:10
appeared 42:4
appearing 15:17
appears 46:4 50:11
52:13 88:2 92:22 93:4
95:13 97:17 99:10
117:19 188:12
application 133:22
137:13 139:2 153:25
183:8
appointment 96:10
approach 19:23 162:4
approaching 197:4
appropriate 33:7
appropriately 21:22
approval 50:15 137:14
approved 19:23 50:4
137:17, 23
approver 50:7
approximately 116:15
142:11 143:23
April 94:19 134:23
135:9 194:25
Aqua 152:21, 24 153:10
154:25 155:17 157:6
ARAM 39:7 81:6, 10
82:2, 3 83:5 86:5, 7, 15,
16, 21 87:4 171:10
205:14
Arc-2 25:20 32:6, 9, 16
33:10, 14
architecture 28:17 65:1,
11, 14, 16, 21 66:8, 18
91:14
area 43:18 139:10, 12
140:15 200:23, 25
areas 10:19 26:14
201:10
arisen 166:23
arrangement 62:22
162:23 181:2
arrangements 163:12
array 19:2
Article 239:7
ASAP 180:3
aside 16:5 21:3 30:3
31:4 34:7 35:17, 22
37:1 52:14 67:24
100:11, 21 124:1 128:9
147:25 185:24 196:17
210:12 214:23 215:5
221:3

asked 13:3 26:8, 9
34:22 45:19 56:18 63:1
75:10 82:22 104:19, 24
106:7, 9, 10, 21 107:8, 24
117:21 192:15, 16 207:2
214:15 217:10, 19
222:20 223:11, 13
225:18 228:21 230:22
232:1 234:15, 20 236:11
asking 16:2 21:23
69:19 75:18, 20, 23
79:25 85:8, 18, 23 91:24
107:22 113:12 122:10
124:12 125:13 130:13,
20 161:25 164:21 185:8
207:24 220:7 225:3
aspect 28:20 29:9
aspects 11:22
asserting 209:16
assessment 41:20 43:11
44:10
asset 18:6 40:8 44:12
45:7
assets 44:4 45:4 201:23
202:11, 15
assigned 10:1
assist 10:2
assisting 13:16
associated 192:3, 18
association 192:23 193:4
assume 8:2 24:1, 16
83:23 84:1 170:17
assumed 27:13 47:4
49:22
assuming 167:14
assumption 44:24 202:7
ATLANTA 1:3 2:5 6:7
8:19 24:20
Atlanta, Georgia 1:17
attached 137:25
attachment 81:25 82:7,
14, 19 87:12, 20
attachments 82:10
attempt 99:5
attend 74:23
attended 9:1 80:24
attendee 61:13
attendeess 139:23
attorney 240:17
audit 115:24 116:3
194:24 195:22
August 1:15 6:2 238:20
239:5, 18 240:20
authorized 154:2 165:19
181:9, 20 184:4, 11
185:4, 9, 11, 16, 18, 25
190:7, 16 205:23 209:21
210:1 226:23 227:10
automated 79:22 80:8
available 40:1, 2 99:6
100:18, 22 126:8, 11, 13,

17, 20 127:1 132:12, 22
133:21 139:22 142:20
143:4 144:23, 25 146:7,
11 216:21 217:8 223:8
Avangrid 204:19 205:1
206:10
aware 15:7 16:16, 18
20:14, 22 24:13, 20 25:6
32:16 34:14, 24 35:8, 13,
14 36:2 37:3, 5 38:10
39:25 40:5, 6, 11 42:21
46:22 51:22 53:2, 11, 13,
14 55:18, 20 58:10, 12
59:6 62:8, 11 75:25
92:2 95:1, 2 100:8, 24
101:1, 3, 5 102:20 103:8
104:10 105:3 106:13
116:6, 9 119:4 121:18
122:7, 16 124:1 127:5,
18, 22 128:4, 8, 12, 13, 17,
23 129:20, 23 131:23
135:11 142:25 144:22,
24 146:2, 20, 23, 25
147:7, 8, 9, 25 148:1, 4
157:18 162:4 182:11
192:20 194:24 195:22
204:4, 7, 8, 17 205:4
206:25 207:5, 10, 13, 18,
25 208:3, 16 209:19
210:9 211:2 212:20, 21
214:11 219:5, 7 221:2, 5
227:11 234:8, 13 236:10
237:3, 16, 18

< B >

bachelor's 9:7
back 24:10 25:11 40:16
43:21 53:22 56:9 62:15,
25 78:12 79:14 82:6
86:24 87:8 93:17 99:13,
19 109:18 112:13 117:4
118:12 121:2 122:3
124:21 127:11 129:14
144:9 145:24 164:12, 14
165:19 176:2 177:25
178:12 179:3, 12 181:14
184:18 190:14 194:8
211:7 216:5 226:11
227:16 229:8 231:20
background 198:1, 3
backlash 168:12
bad 186:18
Barnabas 193:15, 17, 25
195:6, 9, 18, 20
barrel 149:8, 13
base 38:7, 8 46:10
201:15, 17, 19 228:22
based 18:21, 22 19:3
24:19 25:15 46:4 48:14
50:6 69:6 94:21 99:10
104:4 106:17 108:13
124:14 134:1 135:3, 11,
13, 14 154:7, 20 157:3
162:14 210:20 226:19
228:13
basically 238:10
basics 187:23
basis 23:15 44:21 124:8
125:9, 17 231:1
Bates 133:13 137:25
140:1, 23 166:9
battle 47:21, 25
began 197:19
beginning 122:9 180:6
195:24
begins 6:3 77:8 87:21,
24 94:12 121:3, 5
129:13, 19 137:9 153:1
198:13 235:2
BEHALF 2:9 6:13 32:6
belief 214:19
believe 11:14 14:14
16:21 17:4, 5, 18, 23
18:20 23:15 24:6, 19
25:18, 21 26:1, 12 27:1,
14 29:3 32:19, 22 34:20
36:19 38:14 45:18 47:3
48:7, 15 49:17, 18 50:11
53:3, 23 61:5 62:14, 16,
24 63:2, 14 64:23 69:3
71:13 72:6 73:4 74:14,
20 75:7, 15 76:23, 25
80:18, 21, 25 81:1, 22
82:10, 14 87:12, 19
89:16, 17 95:18 96:11
97:15 98:16, 17 102:14
103:4, 19, 21, 23, 25
104:11 105:22 106:9, 20
108:20 111:2 114:18
115:3, 15 116:5, 11, 18
118:2 126:24 128:16
131:19 138:17 140:15
145:7, 14, 15 149:18
150:8, 16 152:8 153:24
154:13 157:4, 10 160:15,
16 161:6 162:5 165:24
172:1, 6 174:23 177:17
180:11 181:17, 20
185:18, 20 189:1, 9, 10
191:14, 22 192:16
193:23 197:2, 16 204:1
208:15, 19 209:12 210:8,
10, 20 214:12 215:14
218:12, 15, 17 219:24
220:9, 20 224:11 225:14,
15 228:9 232:17, 23, 25
235:16, 23, 25 236:9
believed 60:13, 23
236:15
Belinfante 1:16 2:4 6:6
beneficial 175:21

best 10:5 120:3 153:6
229:20 240:11
better 19:25 28:2 187:5
biannual 23:15
bid 46:23 48:17, 20
49:1 51:16, 18, 21 155:4,
11, 17
bidder 52:23
big 188:4 204:15
207:17 208:1 209:22
billed 187:14 188:14, 19
bit 39:4, 14
blood 240:16
Bloomberg 204:13
207:6, 14, 16
Bluff 8:20
BNA 204:13 207:14, 16
board 148:21, 22 168:18
239:8
Boggs 6:12
BOGGS,LLP 2:10
book 82:3 86:5
booking 171:20
Bortniker 103:3
bottom 38:24 47:15
49:5 68:15, 24 69:22, 24
74:6 120:1 140:10
153:2 166:9 177:21
180:12 190:19 216:18
Bradley 41:9 43:10, 19
break 20:7 56:5, 8, 12,
15 93:13, 16, 20 116:21
117:1, 5, 8 124:16, 17, 20,
25 164:6, 11, 16 176:3
194:4, 7 197:23 211:3, 6,
10, 13 216:4 231:19, 24
breath 7:17
Brent 197:14
Brett 12:20 45:19 53:6,
11 57:1 60:10 61:3, 9
71:19 72:7 103:3 162:3,
5 218:6 219:18 232:10
233:7
brief 141:5, 9
briefly 13:3 16:11
bring 72:17, 22 102:18
149:19
bringing 177:25 198:20
brings 229:5
broader 20:20 106:6
167:12 168:7 201:5
brought 181:12
bucket 210:7
buckets 171:19
build 59:21 62:10
63:15 67:13, 21 80:15
214:13 232:18 233:1
234:1, 9
building 53:20 59:19
61:19 62:22 237:2

built 48:7 61:20, 21
217:4
bulletpoint 69:15, 18
77:13, 23 78:9 86:25
87:3, 21 162:8 168:11
169:7 170:1, 16 173:8
174:15 175:14, 16 180:1,
10, 24 198:12 199:10
bulletpoints 78:14, 15
131:16 163:3 179:21
198:14
bundling 154:7, 11, 19
157:3
Burns 197:14, 15, 18
Burts 12:20 16:11 26:3
54:3, 16 60:10, 13 61:3
68:25 69:13 70:22
71:12 72:13 73:9 103:3
115:8, 11 162:6 218:6
219:18 232:10 233:8, 18,
20, 23 234:7, 24
Business 8:16, 18 10:4
11:23 12:1, 3 18:12
38:12 44:22 45:2 51:2,
4 55:23 88:6, 7, 18
89:10, 17, 21, 25 90:6, 8
99:13 154:25 235:3, 9
buy 19:23 158:20 159:3
173:15 235:10

< C >

calc 39:7 81:6, 10 82:2,
3 83:5 86:5, 22 87:4
calculate 205:20
calculating 205:15
calculation 86:7, 15, 16
131:10
calculations 90:6 171:10
call 12:16, 18 18:15
28:6 60:19 61:4, 7, 10,
17 62:13, 18 63:11
68:16 96:16 105:5, 7, 9
112:5, 9 166:15 173:11
184:14 202:18 217:1, 8
218:8 219:3, 11, 12, 16
220:8, 9, 10, 20 230:11
232:1
called 17:2 28:8 63:16
76:15 101:14, 17 157:7
calls 60:10, 17, 22 61:1,
8, 11, 12 62:8, 19 63:22,
24 81:9 85:13 105:4
115:13, 16, 18, 19 219:13,
14 220:25 233:8, 12
canceled 207:6 215:23
capabilities 201:25
Capital 24:16
Car 7:7
card 235:3, 9
career 115:7 158:7
carelessness 237:13

CARR 3:18 13:6, 8
38:25 45:16, 24 47:15
186:11 187:9 188:11
223:14 224:18
carried 108:9
carries 76:24 77:9
Carr's 47:24
carrying 235:3, 8
CASE 1:7 6:5 14:11
15:3, 4 16:10, 17 37:2, 6,
16 52:13 56:13 93:21
95:18 97:17 100:9
105:22 116:10 117:6
118:2 119:14 124:24
127:6 128:13, 19 136:10,
12 154:22, 24 164:15
174:23 202:1, 4, 6
208:19 211:11 222:23
230:14 232:23 240:18
cases 18:13 209:14
casual 15:2
categorize 184:25
cause 169:15 170:4
caused 178:21
CC'ed 186:11
CCR 239:21 240:24
cease-and-desist 58:11
ceased 114:25
Celeste 224:22
CEO 30:21 50:4, 9, 12,
15 103:2 167:4 197:8,
11
certain 81:6 153:21
209:14 230:24
certainly 41:18
CERTIFICATE 3:9
certifications 9:11
Certified 1:14 165:22,
24 169:8, 12, 15, 24
173:5 174:9, 13 175:14
176:25 177:9 181:21
239:11, 22 240:6, 25
certify 240:8, 13, 16
CFO 30:21 103:2
198:20
chain 68:12 70:16
72:15 98:22 99:10
148:11 176:17 177:18
190:11
challenge 85:17, 21 86:1
108:4 192:2, 18
change 11:20 48:13
157:14 170:13
changed 132:20 139:5, 7
142:23 210:21, 24
changes 173:24
characterization 168:7
charge 235:12
charges 235:16, 21, 23
charging 236:8

Chesapeake 189:20
chief 197:12, 18
choose 151:21
CHPK 189:19
CHPK-like 189:17, 18
CHP-like 189:18
Chris 43:23 142:2, 7
166:6, 10 176:17
circumstances 103:22
224:15
claim 201:24, 25
claimed 132:12
claims 78:9
clarifications 216:9
clarify 12:9 125:12
135:1
class 86:6
classic 170:6 179:4
classified 81:22
classify 49:14 113:21
124:6
clause 87:3
clauses 27:15 30:1, 3
87:2
clean 40:18
cleanse 114:1
cleansing 25:7 113:18,
24 153:20 182:24
clear 41:25 42:19 54:16
85:7 183:24 216:14
217:21 225:2 229:10
clearly 169:12
CLEVELAND 2:12
clicked 126:10
client 112:17 163:24
clients 160:21 161:3
cloud 111:6, 13 112:4, 9
113:4, 10, 20 114:11
158:9, 14, 20 159:3, 13
160:4, 9 164:3, 24 165:3,
14 169:13 170:11, 13
178:20, 21 179:1, 18
180:2, 25 181:7 182:20,
21 183:1, 10, 22, 23
184:6, 19 185:19 190:21
191:25 235:11
cloud-based 157:15, 25
178:17 179:3 184:12
code 28:2, 8, 9, 12 37:19,
24 38:1, 2, 5, 7, 8 63:8
75:14, 17 90:1 112:12
126:16 145:9 222:9
Cohen 29:8
Cohn 26:22, 24 27:22
28:19 30:12 32:5
collaborated 164:1
collaborating 228:13
collaboration 228:6
collect 16:19
collected 28:9

Collette 1:14 239:11, 21
240:6, 24
Collin 42:7
column 31:19, 23, 25
32:2 83:5, 9, 10, 20, 22,
24 84:2, 6, 10, 18 86:4, 5
133:20, 25
columns 32:2 82:1, 3
83:19 84:5
combination 81:1 84:9,
11 155:2 171:5, 6
combined 90:1
come 27:20 64:14
74:21 85:20 97:18 98:3
133:25 147:12 164:18,
22 181:13 226:4 227:16
comes 22:14 121:23
148:17
comfortable 98:6 223:6
coming 36:1, 3
commence 101:14
comment 29:23 56:22
187:12
comments 148:17 162:3
185:21
committee 167:8
common 83:8, 19
communicate 59:22, 25
60:16 71:18 78:6
166:16 192:14 237:19
communicated 15:19
55:7 59:17 60:11, 15, 25
61:24 62:16 67:2 70:8
71:13 72:6 77:18
115:25 149:14 150:16
160:20 163:14 167:22
169:20 177:7, 11 184:20
206:25 237:23
communicating 57:1, 12
115:22 188:12 224:21,
24 226:17 237:20
communication 52:17
62:20 96:9 117:21
146:15 149:19 158:24
167:2, 21 169:21 177:4
189:12 195:15 223:14
communications 15:25
16:3 21:3 55:14 59:2
60:8 78:3 81:13 85:8,
10 102:1, 15 112:2
115:13 117:17 118:12
132:3 167:11, 15, 16
168:6 169:1, 19 181:8
185:24 189:5 190:4, 7
195:12, 17 206:22
209:16, 19 210:16, 24
220:19 221:4, 5 222:6
226:10, 11
companies 160:4 168:3
218:18

company 14:14, 23 17:2,
5, 13, 19 39:3 50:4, 9
86:5 153:15 157:7, 11,
18 186:19, 20 188:15
193:15, 18 205:13
208:12
company's 14:15
compel 18:23
compete 42:2 43:6
46:25 49:18, 20, 23
156:10 212:5
competed 71:25
competes 212:8
competing 53:20 59:19
151:22 213:25 214:2, 3,
13
competition 42:25 43:3,
7 49:6, 11, 15 50:24
51:8, 12 72:3, 5, 6 150:2
152:5, 12 155:4 156:6
174:16 201:23 203:22
competitive 11:10 39:5,
8, 15, 18, 20 42:1, 4
46:20 66:19 156:16
171:1, 7 174:17, 22, 25
204:2, 20 207:3 232:18
233:2 234:2
competitor 26:15 40:7
66:1, 4, 9 155:24 192:3,
19
competitors 47:4 53:4
67:10 156:24 209:2
complained 149:7, 12
151:6
complete 106:18 114:15
160:6 162:16 180:13, 17,
18
completed 17:17 114:18
160:11 188:3
completely 199:3
completing 159:24
164:4, 5 183:14
completion 181:13
compliance 208:21
complies 6:16
component 182:22
components 29:16
229:18
Con 147:9, 13, 20, 21
190:3, 8, 17, 22 191:10,
17 192:13, 15
concern 26:13 46:13
47:24 53:18, 22 89:24
90:2 151:9, 20 152:2, 3
155:6 165:6 188:9, 10
195:4, 9 229:11, 12, 13,
15, 18 231:6 237:15, 19,
20, 23
concerned 45:20, 22, 25
46:25 71:4 155:3 156:6,
7

concerning 221:18
223:14 225:20
concerns 59:17 61:18
62:21 74:9 80:11 96:1
150:19, 24 195:13
217:23 219:9 224:24
227:9, 11, 13, 21 231:8
232:25
concludes 238:19
conditions 8:12 19:3
conduct 13:12
conducting 115:23
conference 11:8 199:21
confidential 21:11, 19
22:14 55:8, 12 60:4
62:22 89:11 90:16 98:5
121:19 123:12 127:1
140:9 206:23 209:18
234:1
confidentiality 33:7
66:14 221:22
configure 10:5
confines 33:8
confirm 56:11, 14 69:25
93:19, 24 117:5, 7
124:23 164:14 194:14
211:10, 12 231:23, 25
confirmation 70:23
confirming 70:7
confirms 65:5
confused 155:18
conjunction 178:5
connected 134:21 192:20
connection 32:17 66:8
138:4
consent 55:4, 7 60:3
61:23 108:3 210:17, 25
211:2
consenting 57:8 62:2
consider 127:1
consideration 152:11
considered 31:6 37:8
132:5 165:18, 20 224:5
considering 45:21 165:2
177:25 179:3, 6 185:2,
19
considers 35:24
consist 11:19
consistent 148:11
consists 30:6
constituted 140:3
constitutes 35:19 132:20
consult 115:8
consultancy 24:19
consultant 9:23, 25
10:12, 14 17:9 46:9
159:19 198:2 224:1
Consultants 12:19 24:16
78:24 79:6 80:7 113:3,
9, 18 156:10, 16 160:23

223:21 234:21
consulted 99:12
consulting 25:1, 2 53:19
79:3, 20 106:14 153:15
156:10 159:6, 9 161:5
163:20 165:13, 15
193:18 195:6, 9, 18
209:10 218:19 227:14
230:13
contact 13:14, 16
contacted 108:17 239:14
contacts 39:10
contain 145:22 211:16
contained 1:13 211:18
contemporaneous 176:3
contend 136:18
contended 100:17
126:20 213:22
contending 130:8 135:19
contends 123:14 136:18
content 92:20 129:15
137:15, 17 139:9, 14
context 130:24 149:23
151:3, 17 154:13 163:10
170:9 201:5 202:22
229:5
continue 170:4 178:9
continued 96:20
continuously 9:17
contract 30:25 31:4
33:6, 8, 16 38:9 108:16
166:15 228:14 239:16
contractor 191:9 239:12
contracts 29:21, 25 30:3
32:14 35:17, 23 38:4
control 112:23
controlled 25:14
controller's 61:15
conversation 7:14 16:13
22:14 29:24 34:9, 14
40:25 64:7, 10 69:4, 16
71:13 72:16 85:4 95:25
97:16 99:15 114:22
115:10 149:24 151:3, 23
152:9, 14 158:2, 18
166:21 178:24 181:5
192:15 193:11, 12
conversations 10:10
30:15, 17, 19, 22 36:1, 4,
7, 8, 10 59:5, 10, 16 60:1
69:1 96:24 100:11, 15
118:17 123:22, 24 158:4,
6, 11 162:5 165:12
182:6 186:2 195:19
210:22 219:8
convert 17:10
converted 186:20
Cooper 212:12
coops 229:2
coordination 228:19

copied 64:23 81:6
 145:4 167:3 194:19
copies 23:22 38:5
 144:25
copilot 80:17, 23 81:1
copy 40:16, 18 58:13
 73:10 74:19 76:6, 11
 94:4, 7 97:5 99:1 100:5
 102:8 109:24 110:13
 118:6 119:25 120:16
 144:10, 20 161:10 186:6
 189:25
copying 143:15
copyrighted 216:18
core 201:15, 17, 19
 202:1, 3, 6 228:21, 25
corner 177:21
Corporation 227:3
correct 9:21 20:3 22:3,
 4 23:20, 24 24:4, 18
 38:6 41:4, 12 48:11, 17
 50:1, 9 55:25 65:2 69:1
 70:11, 17, 20, 21 72:1, 17,
 20 73:24 77:3 78:13, 18
 82:4 87:5 88:15 89:6
 93:2 99:9, 23, 25 100:9
 101:2 102:2, 12 104:17
 105:21 106:6 107:7, 14
 112:19 115:14 120:5
 125:10 131:17 132:13
 134:18 135:20 136:15
 140:10, 24 141:17
 142:16 143:11 144:1, 21
 146:5, 8, 9 147:18 152:6
 155:8, 12, 21, 24, 25
 156:3, 6 160:2 162:20
 165:16 167:4 172:14, 15
 173:2, 6, 21 174:3, 6, 10,
 11, 22 175:14, 15 176:19
 178:14, 23, 24 179:4, 8
 180:3, 7 181:10, 11
 183:5, 6 184:19, 23
 185:14 187:8, 10, 14, 17,
 18, 20, 25 188:16 189:6,
 14 192:25 193:7 194:13
 199:8 200:6 203:24
 211:1, 14 212:5, 25
 213:16, 23 214:1, 6, 7
 215:7, 22 221:1 226:21
 227:4 228:20 230:2
 232:22 233:2, 5, 6, 21
 234:3, 10 236:1, 3
 240:14
correctly 70:24 71:7
 88:9, 10 102:20 112:6, 7
 130:18, 19 137:15 139:3
 141:7 142:13, 14 144:16
 148:18 149:9, 10 150:4,
 21, 22 151:13, 14 153:7,
 12 154:9 162:11, 12, 18
 163:5 167:12, 13, 24

168:15, 16, 23, 24 169:16
 170:7, 8, 19, 20 171:21
 172:21 173:18, 19 174:2,
 19 175:1, 6, 7, 22 176:14
 178:1, 2 179:14 181:2
 186:12, 21, 22 188:4, 16
 190:23 191:11, 18
 198:22 199:13, 14
 201:15, 16 202:2, 12
 232:19, 20 235:14, 15
 236:17
correlation 82:1
Council 239:8
Counsel 6:8 15:19 16:6
 21:3 40:16 61:11 73:11
 77:19 78:3, 4 81:13, 14
 82:22, 24 83:3 85:1, 5, 9,
 10, 18, 20 94:4 97:5
 99:1 100:5, 11, 14, 15, 19,
 21 102:8 109:24 110:13
 114:23, 24 116:11 118:6,
 8, 18 119:1, 25 120:16
 122:11 123:23, 25 124:2
 125:7 127:7 128:3, 9, 20
 134:4 135:4, 12, 15
 161:10 185:20, 24 186:6
 189:25 193:10, 13
 210:12, 20 222:5 226:5,
 12 238:4 240:17
counterclaim 119:14
 121:3, 12 127:5, 8, 12, 13
 128:14
counterclaims 121:5
COUNTY 239:5 240:4, 7
couple 14:7 15:2 118:8
 216:8 217:20 225:18
 229:9 231:16
course 211:19
COURT 1:1, 15 6:14, 17
 7:12 239:8, 11, 15, 22
 240:6, 25
courtesy 97:5 99:1
 100:5 102:8 109:24
 110:13 118:6 119:25
 120:16 161:10 186:6
 189:25
cover 7:10
covered 33:15 36:12, 17
create 108:4 174:13
 182:19 229:23
crisis 168:14
criteria 108:23, 25
 109:15 172:1
critical 32:3
CROSS-EXAMINATION
 3:5
Crye 43:22 44:17 196:9,
 13, 17
Crye's 44:10
Crystal 92:16, 17, 25
Curier 42:8

current 21:7 33:8
 162:14 170:5 225:6
currently 196:1 213:8
 225:12 228:1, 2
custom 38:7
customer 10:1, 2, 21, 22
 11:17 12:8 18:4 21:12
 25:14, 15, 17 30:3 31:1,
 4 32:13 33:5, 14, 15
 35:17, 22 36:1, 4, 6
 37:19, 25 51:3, 6 54:13
 55:21, 24 56:23 57:13,
 19 59:5 61:4 64:4, 8
 66:12 67:5 93:10
 105:23 108:3, 5, 15
 112:8 113:9 114:2
 139:15 151:8 152:22
 157:12, 20 159:9 163:1
 171:24 184:18 185:6, 19
 186:16 189:20 200:15
 201:15, 17, 19 204:4
 205:5 209:13, 14 210:22
 212:3, 24 213:19 217:20
 221:6, 11 225:4, 5
 228:14, 18, 19, 22 230:9
 233:4
customers 11:6, 25
 17:10 18:8, 10, 11, 23
 19:23 23:9 24:21, 22, 24,
 25 25:7 29:22 30:19
 32:7, 13, 18 35:18, 19, 24
 36:24 37:24 38:1, 2
 45:6 48:5 53:24 59:3, 8,
 11, 13 63:25 64:10
 66:13, 22 67:2 74:10
 79:16 89:11 91:5, 16, 20
 92:1 93:5 101:22 106:5
 108:15, 18, 22 109:2, 4,
 11 111:5, 12 112:14
 113:3, 17, 19 114:4, 9
 115:4, 23 116:1 117:22
 132:3 147:8 148:1, 22
 149:6, 11, 14 150:25
 151:5, 21 153:20, 25
 154:4 156:13 167:12, 23
 170:2, 12, 17 172:5, 7, 19,
 23 173:12, 15, 25 174:18
 175:12 184:5, 12, 16
 201:25 204:17, 18, 25
 205:8 208:20 214:4, 5
 215:23 228:23 229:5, 6
 230:1, 8, 11, 16, 18, 24
 232:15 233:9 236:12, 17
 237:19, 21, 23
customer's 25:16 229:20
cut 70:4
cutting 228:10
Cvent 137:13 139:2
cycle 225:14
 < D >

DAHLBY 1:12 3:3 6:3,
 14, 23 7:2, 4, 5 15:13
 19:11 38:18 40:15
 45:11 48:23 52:5 56:11
 58:18 68:9 73:10 76:3
 86:3 92:5 93:19 95:13
 97:4 98:25 100:4 102:7
 103:13 105:13 106:16
 109:23 110:12 111:19
 117:5, 8 118:5 119:7
 120:15, 22 124:23 148:7
 152:18 161:9 164:14
 166:3 177:14 182:1
 186:5 189:24 194:14
 198:6 200:2 211:10
 216:8 231:23 238:1
 239:4
Dahlby's 238:19
Dan 142:2
Daniel 142:8
dare 235:10
dash 199:11
data 10:4 19:25 25:6,
 10, 17 65:1, 15, 21 66:8,
 19 78:12 79:9, 14 83:9,
 20, 24 84:5, 9 86:6, 14,
 17, 19, 20 88:3, 8 91:7,
 10, 14 113:4, 18, 23
 114:1, 2 153:19 182:20,
 24 183:10, 17 206:9, 13
 211:20, 23, 25 215:15, 17
 222:11 229:17
database 25:17 30:8
 31:22 62:6 63:8 65:1,
 10, 11, 13, 15, 17, 20 66:7,
 18 78:10, 11 81:6 82:4
 83:15 90:1, 15, 19 91:3,
 6, 14 93:6 112:12, 17, 18,
 24 113:3, 11, 16 153:25
 159:17 160:6 178:4, 7
 182:20, 25 183:7 206:13
 209:10 213:7
databases 25:10, 11
 31:19 32:6 35:12 78:12
 79:7, 15 93:2 113:9
 116:3 153:23 156:3
 159:13 183:11 209:7
 210:18 211:25 212:1, 25
 213:15
date 38:15 70:12 94:20
 133:21 135:17, 24 136:4
 180:7, 21 197:16 224:14
 233:24 234:8
dated 69:11, 12
dates 40:12 59:4 73:5,
 16 95:12 134:6 141:10,
 11 179:14 224:12
day 103:16
days 176:5
day-to-day 9:24 11:4, 5,

19
deadline 180:14, 15
deal 153:6
dealings 35:18
decide 34:2 126:24 131:11
decided 116:19
decision 180:2, 7, 10 185:23 238:10
decisive 180:2, 9
deck 24:4
decks 21:24
declaration 137:25
deep 43:13 218:20
deeply 48:17
DEFENDANT 1:9 2:9
deferred 87:5, 14 88:3, 19, 22 90:6 171:9 205:15, 21
define 31:21 79:2 91:23 131:20 132:15 146:13, 14 172:7
defined 31:1 109:1
definite 90:11
definitely 18:22 28:15 29:13, 24 30:7 32:3 42:3 43:13, 15, 17 44:14 48:6 52:1 67:8
definition 34:21
definitions 31:15 34:5
degree 9:2, 4, 7
delimit 200:22
deliver 22:23 23:5, 8
deliverables 32:21
delivered 21:25 22:8 24:3
delivering 22:17 24:10 172:20 187:19 232:16
Deloitte 98:16, 17 198:17 210:3
demand 34:24 193:25 214:16, 21 215:3
demonstrate 75:4 80:23
demonstrated 75:1 80:25
demoted 146:21
department 137:14, 20 138:10, 12, 21 160:18
departure 224:16
depend 159:23
depending 19:8 159:7
depends 18:12
deployed 114:10
deployment 112:5, 9 113:20
DEPONENT 3:2
deposition 1:12, 14 6:3, 5 7:5 15:17, 21 16:7, 9, 11 216:14 238:19 239:4, 15, 16
depreciation 82:2, 3

Describe 9:24 32:1 50:21 80:11, 13 96:3 101:18 112:20 228:23 237:6, 10, 12, 15
described 37:12 74:16 131:2 151:6 163:8 168:13 215:14 225:13
describes 77:9 84:5 169:12
describing 39:8 52:15
DESCRIPTION 3:15 31:25
descriptive 83:19 203:4
design 88:7 89:21 91:2 127:25 128:11
desire 106:4 184:22, 24, 25
despite 33:3, 10 51:15
detail 96:5 145:18, 25 176:19 223:5
details 49:5 51:8 86:16 167:1 208:13
deter 173:25
determine 108:23 230:19
develop 44:12 68:2 71:22, 24 90:7 127:25 128:11 169:11, 24 229:16
developed 68:4 74:19 79:4 88:2, 5 180:16 215:9
Developer 182:18
developers 28:6
developing 44:16 173:5 229:14
development 74:9 88:4, 6 210:11 221:18 222:9, 14, 15
difference 48:4 80:6 156:20
different 11:22 25:1 26:11 29:16 59:4 65:12, 15 67:12 69:4 79:3 103:22 104:12 112:14 115:6 128:7 137:2 141:14 147:18 156:15 163:11, 16 165:21 187:1, 4 188:7 190:12 191:24 201:11
differentiation 84:13
differently 111:14
difficult 7:22 163:9 172:20 173:1
dig 231:16
DIRECT 3:6 11:14 22:18, 23 23:4 64:7 113:11, 16 122:20 195:15, 19
directly 10:9 22:9 34:13 43:16, 19 91:2

93:2 195:11 237:20
disagree 158:22 159:2
discharge 227:13, 14
discharged 221:25
disciplined 146:10, 13, 14
DISCLOSURE 3:8 239:9
discount 49:25 50:3, 8, 14, 19 51:15
discounted 48:17
discounting 50:10
discounts 154:7, 11, 19 157:3
discovery 136:10, 12
discuss 34:22 62:15 99:16 117:22 124:13 217:22 233:17
discussed 16:6 49:1 64:2 98:14, 16, 17 165:24 167:8, 11 169:3, 22 175:19 177:2, 4 187:23 191:23
discussing 36:11 42:21 74:9 99:18 152:23 161:23 163:11, 15 178:8 220:20
discussion 30:4 32:23 58:8 63:24 72:12 117:6 148:16 149:1 163:11 166:14, 19 176:8, 10 220:21
discussions 14:8 16:5 29:19 30:12 31:14 36:23 56:13 57:25 58:3 64:13 93:20, 25 96:3 100:12, 14 124:24 149:3 164:15 194:15 211:11 220:15 231:24
dismiss 116:7, 13
dismissed 127:6, 9 128:15
dismissive 180:25
dispute 27:7 28:21 33:24 92:19
disruption 71:6, 10, 24
dissatisfaction 168:12
distinction 202:22 208:24
distinguishing 213:8
DISTRICT 1:1, 2
DIVISION 1:3
DOCUMENT 3:16 4:2, 3, 11, 12, 15, 18, 22, 23, 25 5:1, 3, 4, 9, 10 16:13 27:15 31:5, 9, 17 37:3, 5, 15 41:2 100:7 129:4, 5, 8, 10, 13, 19 130:1 135:2 157:1 205:25 216:15, 16 217:13, 15 221:9 232:5
documentation 21:20

30:9 32:20 62:7 63:9
documented 130:5
documents 15:23 16:17, 20, 25 20:25 21:21 23:14, 19, 23 27:9, 11 30:23 31:12 36:11, 21, 22 62:15 73:16 121:1 133:19 140:17 189:7 201:18 222:17 231:16 232:2
DocuSign 73:19, 21
DocuSigned 74:1
doing 7:25 12:24 14:13, 22 51:22 52:20 77:25 80:7 96:23 104:9 106:15 107:13, 21 147:22 156:15 160:13 163:16 179:16 187:7 188:24 204:21 209:9 228:18 230:3, 7, 12
dollar 107:17
Dominion 170:3
door 18:18, 22
downside 175:19
draft 47:18 129:17, 18 185:4, 9, 11, 16 238:14, 15
drag 94:12
Drea 13:19 14:13 103:4 137:22
Drive 8:19
drugs 8:9
due 85:19 177:25
Duffy 14:1 95:5, 14, 24 96:9 97:12, 16 99:16 153:2 155:7 166:14 194:10, 11, 13 198:13 234:24 235:8 236:1
Duffy's 235:2
Duke 36:8, 16
duly 6:24
duplicated 142:9, 19, 23 143:24 145:2
duplicating 143:16

< E >
EAB 148:17, 20 168:12
earlier 57:24 69:1 72:25 88:17 117:21 140:6 189:8 190:4, 6 191:1, 23 214:15 225:13 226:24
Earliest 133:21
early 73:4 88:15 149:3 181:12
easy 187:10
Ed 147:14, 20, 21 190:3, 8, 17, 22 191:11, 17 192:13, 15
Edison 147:10

edited 142:8, 19, 23
 143:24
editing 143:16
educate 35:19, 23
education 9:6
EEL 71:5 167:22 168:1,
 2, 20
effect 149:14 210:22
 218:19
effective 94:17
efficient 237:1
efficiently 131:13 237:7
effort 16:19 131:22
efforts 32:16 35:23
 74:9 121:18, 25 222:15
 225:6, 8
EHALF 2:3
eight 122:24 125:5, 17
either 73:4 88:15
 214:17 220:24
Electric 42:12
elements 145:16
eliminate 152:5
Elkin 200:17, 18
EMAIL 3:17, 18, 19, 20,
 21, 22, 23 4:1, 4, 9, 10, 14,
 16, 24 5:2, 5, 6, 8, 11, 12,
 13, 14
e-mail 19:13 38:25
 39:13, 16 41:3, 8 42:7
 43:22 45:5, 13, 14, 16
 46:16 47:11, 14 49:4
 50:6, 22 52:8, 10, 14, 21
 68:12 69:6, 8, 9, 12, 25
 70:10, 16, 19 71:21
 72:15 76:6 95:13 96:7
 97:11, 12, 15 98:2, 13, 22
 99:10 103:16 105:24
 110:2, 8 112:3 118:13,
 21, 23 120:19 148:9, 10,
 14 149:24 151:24 153:1
 154:5 155:7, 15 161:21
 163:9 166:6, 10 176:4, 8,
 13, 17, 18 177:17, 21
 178:23 179:11 180:5, 6
 186:8 190:10, 14, 19
 191:1 192:1, 2, 8, 10
 198:9, 12, 18 200:5, 11,
 17 201:13 224:19 232:9
 234:24 235:2
e-mails 52:15 68:15, 24
 69:22 72:19, 21 95:7
 97:8 118:8 178:12
Empire 188:3, 7
employ 96:20
employed 30:13
employee 13:12 23:10,
 16, 25 26:20 27:4, 21, 25
 31:14 34:4, 8 140:7
 161:13 197:24 200:19
 223:15 224:5 240:17

employees 21:6, 21 23:1,
 5, 8, 10 26:8, 9 32:9
 66:17 100:22 119:2
 142:16 146:10 191:4
 224:25
employment 13:13 26:8,
 17 31:15
enable 113:14 160:8
 162:16
Enbridge 195:9, 13, 16
encompassed 203:4
ended 94:20
Energy 36:9, 16 157:23
 170:3 205:9, 11 208:12
 229:1
engaged 10:10 11:2
 96:19 104:5 156:1
 188:2, 7 189:4
engagements 213:15, 19
engaging 11:6
engineering 9:5
entails 207:4
enter 184:4 194:1
entered 206:1 227:22
entering 184:11
Enterprise 171:14
entire 61:13 145:9
 146:2 192:8 197:8
entities 187:1
environment 32:13
 169:13 179:18 183:22
environments 25:13
 179:1
equity 27:11
ERICKSON 3:22 43:23
 49:4 50:22 72:16
 177:22
ERP 91:9 170:18
 171:13 202:9 204:12
ERPs 205:6 207:16
ERRATA 3:10
escalate 195:4
escalation 195:8
especially 47:21
ESQ 2:4, 10 239:14
ESQ.....7-216 3:5
ESQ.....216-231 3:6
ESQ....231-238 3:7
essentially 203:8
evaluate 170:17
evaluating 48:15
evening 216:8
event 164:20 213:4
Eventide 153:12, 14, 19
 154:2
events 115:1 139:22
evidence 62:9 63:13
 67:16, 19 122:8, 17, 21
 123:3, 18 124:1 125:2
 127:19, 23 128:8 210:9,

13 214:11, 16 215:8
 233:25 234:8 240:10, 15
evolve 10:16
evolved 88:8
exact 21:16 73:5 91:24
 107:1 108:25 111:2
 138:2 141:10 166:25
 167:1, 9 197:16 203:11,
 18 204:23 210:21
 224:12 233:24
exactly 28:14 67:23
 71:18 96:25 151:25
 228:9
EXAMINATION 3:6
example 24:7 83:22
 173:16 208:7 218:17
examples 62:5 63:7
 173:22
Excel 83:15
EXCERPT 4:19 118:7
exchange 88:14 186:7
exchanged 14:7
excluded 111:5, 9 151:22
excluding 152:11
exclusively 43:14 124:2
exclusivity 158:1, 21
 159:4
excuse 40:8 73:9 108:7
 113:1 136:2 163:19
 211:8 212:1
exec 102:19, 22
execute 32:17
executing 112:2
executive 12:1 15:7
 95:6, 8 102:23, 25
 117:23 119:2 148:21
 167:3, 8 168:18 196:3,
 18 200:10
executives 30:5, 19
 199:21
Exelon 115:3, 5, 6, 9, 11
 150:2
exhaustive 63:7
EXHIBIT 3:15 15:11,
 13 19:9, 11 38:16, 18
 40:13, 15, 18 43:22 45:9,
 11 47:6, 8 48:21, 23
 52:3, 5 56:16 58:16, 18
 64:15, 17, 22 68:7, 9, 16,
 25 69:10, 23 73:10, 11,
 18, 21, 23, 24 74:2, 4, 16
 76:1, 3 81:4 86:24
 87:10, 19, 21, 23 92:3, 5,
 11 94:1, 3, 11 95:10, 12
 97:2, 4, 12 98:23, 25
 100:2, 4 102:5, 7 103:11,
 13, 17, 20 105:11, 13, 18,
 24 107:18 109:21, 23
 110:10, 12, 13 111:17, 19
 117:13 118:1, 3, 5 119:5,
 7, 17, 19, 20, 22, 24 120:4,

15, 23 121:2, 3, 12 122:4,
 22, 24 126:2, 25 127:11,
 14 129:1, 3, 13, 20
 132:25 133:2, 17, 18, 20
 134:17 138:24 140:18
 148:5, 7, 15 152:16, 18
 154:6 155:16 161:7, 9
 166:1, 3 176:2, 12
 177:12, 14 179:10 180:6
 181:24 182:1, 12 186:3,
 5, 10 189:22, 24 194:17,
 20 198:4, 6, 14 199:25
 200:2, 7 216:9 223:11
 226:24 232:7, 9 234:18,
 20 235:1
Exhibits 73:6 120:12
 141:24 191:22 222:21
existed 17:7 72:4 96:2
 129:21
existing 72:5 173:12
 191:10
expand 151:12 163:5
expanding 173:17
expect 201:22 203:22
expectation 65:6 107:16
expected 88:5
expecting 105:25
expense 13:17
experience 8:4 47:22
 89:2, 3 150:3
experienced 235:13, 17
expert 31:21 126:23
 131:20 132:15
explain 53:5 187:22
 228:7
explained 15:23 21:6
explicitly 199:11
export 78:12
express 165:6
expressed 165:8 168:12
 184:22, 24, 25 185:1
 227:21
expressing 230:24 231:7
expression 228:22
expressly 106:21
extent 43:8 62:13 69:23,
 24 77:17 81:12 82:21
 86:17, 19 128:2 212:2
 226:3, 9
external 98:8, 12 159:16
extract 113:25 114:2
 206:13
extracting 25:10
extremely 44:22

< F >
facing 174:16
fact 19:4 27:2 34:7
 54:23 64:19 83:8 90:10
 107:20 108:2 126:19
 127:19 128:10 136:14

140:14 145:11 168:17
169:24 172:25 180:19
213:6 214:19 237:16
factor 213:9
facts 62:9 63:13 122:17
123:3, 18, 25 124:1
125:2 127:19, 23 128:8
210:9 215:8 226:3, 4
233:24 234:8
factual 120:4 125:16
fair 85:14, 15 129:12
168:7 202:5
fall 58:10 59:7
Fallback 163:4, 7
familiar 17:2, 6, 8 23:2
65:20 86:16 92:8
139:20 157:7 177:16
193:15 216:20
far 21:15 35:11 39:21
99:24 100:1, 20 115:19
131:22 132:19 134:9
139:25 146:22 171:9
175:24 191:13 199:7
206:15 209:6, 15 210:15,
19, 23 227:5, 12 234:2,
10
faster 90:7
FAZIO 2:10 3:6 6:12
15:25 16:2, 5 18:19
20:8 26:6 28:4, 22 29:5,
11 31:8 33:12, 25 34:12,
19 37:20 39:24 41:22,
24 42:18 43:4 46:15
47:2 48:1, 18 49:13
53:9 54:6, 11, 20 56:6
59:9 63:17 65:3, 23
66:3, 10, 25 67:6, 18
68:18 69:2 70:6, 12
71:11 72:2 77:5, 16
78:1, 14, 17, 19 79:1, 11,
19, 24 80:9 81:11 82:20
83:11, 25 84:7, 24 85:14,
17, 23 86:1, 8, 11 88:20
89:1, 13, 23 90:9, 21
91:4, 15 92:21 93:8
96:17 97:24 98:20
100:23 101:11, 20
104:22 106:8, 25 107:8,
24 108:24 109:6, 13
110:20 111:1, 8 113:5
114:5, 17 116:23 120:17
121:8 122:10 123:7
124:10, 13 125:11, 19
126:22 128:2 130:11
131:5, 18, 25 132:7, 14
135:10, 21 136:1, 8, 20
139:19 143:20 145:13,
23 149:22 151:1, 16
152:13 156:11, 18
159:14, 22 160:24
161:22 164:6 181:16

184:7 193:1, 8 194:11
206:18 212:13, 19 213:1,
10, 17 214:10, 18 216:7
226:8, 15, 22 231:9
232:1 233:10, 12 234:4,
11, 16 235:19 236:11, 18,
24 237:9 238:2, 17
fear 168:5 184:12, 15
feature 217:1, 4
February 68:13 69:11,
13 70:17 152:11 167:1,
6 175:25 176:9 189:10
198:10 223:17, 18, 20
224:3, 19 232:10
federal 130:9, 22
feedback 184:15 199:17,
20
feel 49:6 51:8 84:13
felt 109:7 149:8, 13
FERC 202:1
Ferguson 61:6
Fifty-three 127:16
file 16:22 35:11 183:19,
21
filed 100:12 116:6, 9
119:14 127:5
files 120:18 134:2
141:14 142:1 146:17
fill 133:24
final 39:4 170:6
finance 14:23
financial 171:16
financially 240:18
find 16:24 57:6 100:22
131:24 175:20 236:20
findings 77:2, 9
fine 101:12 164:7
finish 7:17 220:7
finished 122:25 126:4
133:8 211:4
fire 54:4 106:7, 9 107:2
fired 146:19
firm 74:22 210:7
239:15
firms 207:17 208:1, 16
209:7, 11, 12, 16, 20, 23
first 6:24 9:14, 22
18:12 21:14 36:3 38:10,
21, 24 40:11, 21 42:16
43:21 47:14, 15 55:24
56:19 63:11, 12 67:4
68:15, 19, 24 69:23
73:23, 24 77:13 82:17
84:17 86:4, 9 87:2, 3
92:7 97:11 108:22, 23
109:5, 9 111:22 118:13
121:2 122:22 137:8
140:22 148:14, 15 151:6
152:21 153:2 154:6
155:15 162:8 166:13
168:11 173:4 174:16

176:12, 13, 16 179:10
180:1, 10 186:10 187:10
194:21, 22 198:12, 13
200:7 201:12 218:22
223:3 230:6 235:2
firsthand 8:4
fit 32:3 130:25
fits 31:23
five 73:19 122:3, 18
225:17
fixed 18:6 40:8 44:4, 12
45:4, 6 201:23 202:11,
15
fixes 230:11
flat 199:13
Flint 208:5, 9, 11
flip 74:4 82:6 87:8
129:12 174:8 176:12
177:20 179:10 182:12
186:9 216:17
Florida 51:25 52:1, 16,
17 54:4, 13, 19 55:3, 7,
14 60:6, 9, 12, 13 61:1,
16 62:4, 12 63:11, 12
flow 16:12
focus 47:14 109:11
focused 109:4
focuses 228:23
folder 142:10 143:25
folders 141:4, 6, 15, 20,
22 142:18, 22 143:4
Folks 65:19 166:11
196:11 220:16 234:25
followed 41:14
following 1:12 58:23
83:1 137:14 166:13
182:18 217:21 239:9
follows 6:24 17:25
19:22 46:14 123:6
follow-up 69:3, 16 72:19
97:16 216:8
follow-ups 68:16, 25
foot 18:18, 21
footnotes 21:19
footprint 173:17
forces 150:2
foregoing 240:9, 13
forfeit 20:15
forgotten 196:19
form 18:19 20:8 26:6
28:4, 22 31:8 33:12, 25
34:12, 19 37:20 39:24
41:22 42:18 43:4 46:15
47:2 48:1, 18 49:13
53:9 54:6, 11, 20 59:9
63:17 65:23 66:3, 25
67:6, 18 69:2 70:6
71:11 72:2 77:5 78:1
79:1, 19, 24 80:9 83:25
84:7 88:20 89:1, 13, 23
90:9, 21 91:4, 15 92:21

93:8 97:24 98:20
100:23 101:20 106:8, 25
107:24 108:24 109:6, 13
110:18, 20, 24 111:3, 8
113:5 114:5, 17 117:16,
19, 20, 25 123:7 124:10
125:19 126:22 130:11
131:5, 18, 25 132:7, 14
135:10, 21 136:1, 8, 20
139:19 143:20 145:13,
23 149:22 151:1 152:13
156:11, 18 159:14, 22
160:24 161:22 181:16
184:7 193:1, 8 205:23
206:18 209:25 212:13
213:1, 10, 17 214:10, 18
226:7, 14, 20 233:10, 15
234:4, 11 235:19 236:18,
24 237:9
formal 20:24 21:23
22:8, 15, 17, 20, 23 23:5
24:2 36:2 138:25 143:8
146:17 206:7
formalized 179:12
formally 94:20
formatting 163:9
formed 38:12
formidable 43:10 174:18
forth 30:23 31:5, 13
37:4 77:2 118:12
121:25 123:13 140:7
210:16
forward 98:11 175:21
235:12
forwarded 98:13 200:5,
11
forwarding 98:8
found 83:6 132:22
140:23 236:7
foundation 18:19 20:8
26:6 28:4, 22 33:25
34:12, 19 41:24 42:18
46:15 48:1, 18 54:6, 20
59:9 63:17 65:23 66:10
71:11 72:2 79:1, 11, 24
83:11 89:23 90:9 91:15
92:21 93:8 96:17
104:22 110:20 111:8
114:17 124:10 126:22
132:7 135:21 136:20
145:13 152:13 156:11,
18 159:14 184:7 206:18
213:1, 17 233:10 234:4,
11
four 12:2 19:7 22:6, 9
57:15 58:3, 8 190:13
203:8, 11 204:15 207:17
208:1 209:22 225:16
fourth 180:24 235:1
FPL 53:7, 17 54:2, 17

56:21 59:23
FPL/NextEra 55:1
FPNA 201:11
framework 183:18
 191:16, 20 192:13 193:6
 217:9
frequent 23:12
Friday 190:20
front 56:16 121:1
 216:11
FTP 183:19, 21
full 23:2 86:17, 19
 94:11
fully 236:14
function 230:5
functional 25:1 81:19
 88:7, 21
further 9:6 82:6 129:14
 180:11 193:10 222:3
 238:2 240:13, 16
future 180:2 190:22
 229:24 236:17

< G >

Gaddy 57:22
Galleria 8:18
gas 229:2
gathering 184:15
general 29:12 31:3
 37:10 39:11 43:5
 171:16 172:2 192:9, 15
generalized 29:23
generally 20:21 29:21
 47:20 149:4 166:23
 201:20 217:6 228:24
generate 81:20
generation 82:18
generic 117:19 185:18
genesis 190:3, 5
gentleman 46:5
Georgetown 8:20
GEORGIA 1:2, 4, 15
 2:5 6:7 8:19, 20 9:1, 14
 239:4, 8, 11 240:3, 7
getting 13:17 173:1
Gianflone 196:5
GitHub 140:19 141:5, 6,
 16 142:10, 11, 12 143:9,
 17, 18, 25 144:11, 16, 18,
 20
give 6:18 7:15, 17 8:6
 38:4 46:13 50:8 114:1
 120:9 124:14 137:2
 157:25 158:21 159:4
 182:23
given 20:24 27:8, 9
 44:12 105:25 106:4
 154:8 218:17 240:15
giving 62:16 66:15
Global 24:6

go 16:24 23:1, 12 26:15
 41:24 43:21 44:1 50:9,
 15 53:22 62:14 74:4
 78:2 81:14 85:1 86:24
 100:22 116:24 117:2
 121:15 122:4, 11, 24
 126:2, 16 133:3 145:24
 157:24 175:16 199:10
 203:15 216:1 223:1
 229:8 231:11 238:4, 11
goal 49:9 50:24 51:1, 2,
 11, 13 173:1
go-forward 231:1
going 7:10, 12, 14 8:2
 15:24 16:1 40:21 42:17
 44:15 49:18, 20 61:23
 62:14, 24 73:11 83:20,
 24 85:8 93:12 99:5, 21
 100:13 101:8, 9 102:19
 103:9 115:23 116:25
 117:22 118:11 121:2
 124:18 129:14 138:24
 158:9 161:20 164:9, 23
 172:9 176:21 177:8
 178:7 187:24 189:11
 194:3, 13, 20 216:2
 225:7, 11 226:11 228:8,
 10 230:25 231:4, 15
 233:13 235:12 238:11,
 20
Gomes 50:12 103:2
 149:15 150:10 176:9
 196:5 197:6, 10, 19, 20
Good 7:2 88:18 93:13
 101:7, 8, 10, 11 216:8
Google 126:13
gotcha 185:3
govern 229:19
governed 32:14
Gowdy 57:20, 23, 24
graduate 8:23
graduated 9:8, 14
Grant 208:3, 7
granted 27:13 191:10
grants 27:11
greater 227:17
Griffin 57:17
Griffith 57:17
ground 7:10
group 11:9 57:21
 138:21 167:23 168:1, 4,
 7, 21 169:4, 24 224:1
growth 10:21, 25 11:1,
 21
guess 7:24 16:23 29:23
 34:1 39:10 41:23 55:6
 83:12 95:20 114:6, 13,
 22 120:19 123:22
 124:11 126:23 128:20
 129:6, 10 130:12 131:19
 132:8, 15, 19, 24 135:2, 5

139:7 144:7, 22 152:14
 155:18 158:16 160:5
 169:21 180:14 196:9
 207:21 208:25 210:6
 213:2, 11 217:7
guidelines 23:11
guides 30:9 62:6
gut 153:5
guys 101:9

< H >

Hamby 25:22, 24 26:3, 7
hand 6:15 73:11
handbook 23:10, 16, 25
 31:14 34:4, 8 140:7
handed 40:18
handful 15:22
handing 15:13 19:11
 38:18 40:15 45:11 47:8
 48:23 52:5 58:18 64:17
 68:9 73:9, 10 76:3 92:5
 93:23 94:3 95:12 97:4
 98:25 100:4 102:7
 103:13 105:13 109:23
 110:12 111:19 117:12
 118:5 119:7, 19, 24
 120:15 129:3 148:7
 152:18 161:9 166:3
 177:14 182:1 186:5
 189:24 194:20 198:6
 200:2 232:9 234:20
happen 34:15 107:22
 144:24 237:14
happened 64:12 72:23
 95:19, 20 96:14 98:21
 105:8 179:7 207:9
 213:3 237:4
happening 237:17
head 7:21 137:19
 196:22 203:13, 18
headers 31:19
Heading 76:19 78:20
 81:5, 24 84:2
headings 81:7 87:13
headwinds 169:15
health 8:12
hear 218:21 219:2
heard 17:25 24:25 25:8
 32:8 122:14 124:2
 128:16 168:17 199:17
 210:12
hearing 195:10
help 19:25 84:16 97:18
 208:21
helping 98:3
helps 173:20 175:5
HENRY 239:5 240:4, 7
hesitation 150:20
hey 16:24 34:10 85:14
 100:22

hidden 139:10, 12
 140:15
high 8:23, 25
higher 150:3
highest 109:8
Hills 208:5, 9, 11
hire 113:23
hired 94:24 116:2 205:2
hiring 27:24
historical 19:19
historically 19:15 25:6
 37:18, 23 113:17 149:7,
 11 151:6 159:21
history 53:23 153:12, 22
 165:15
holistic 152:9
home 8:16, 19
homepage 139:13
honored 106:15, 23
 107:6
hope 172:13
hopeful 57:10
Horsted 61:15 218:11
host 37:18, 24
hostage 168:14
hosted 112:17, 18 113:10
hour 93:12 186:11
 194:3
hours 187:14 188:3, 11,
 14, 18
HR 13:11 146:17
hub 182:19, 22 183:5, 9,
 18
Huberick 161:12 179:11,
 23

< I >
idea 18:4 146:18
identical 82:1
identification 118:14, 19,
 24
IDENTIFIED 3:15
 15:11 19:9 38:16 40:13
 45:9 47:6 48:21 52:3
 58:16 64:15 68:7 73:7
 76:1 87:14 92:3 94:1
 95:10 97:2 98:23 100:2
 102:5 103:11 105:11
 109:21 110:10 111:17
 118:3, 9 119:5, 17, 22
 120:13 129:1 148:5
 152:16 155:23 161:7
 166:1 171:24 172:8
 174:21 177:12 181:24
 186:3 189:22 194:17
 198:4 199:25 232:7, 14
 234:18
identify 36:16 39:22
 70:12 100:16 119:3
 128:18 135:24 136:6, 14,
 16, 17 141:25

identifying 11:10 151:20
 155:14 170:12
immediately 10:24
 94:17 121:23
impact 53:7 54:2, 10, 12,
 18 56:21 165:6 168:10
 170:2 173:9, 10 230:4,
 17
impacted 54:13 164:24
impair 8:10, 12
impediment 192:23
 193:6
implement 10:6 18:14
 128:1, 11
implementation 11:2, 7
 19:7 36:15 164:2
 188:19 225:6, 8 236:16
implemented 18:10, 11
 186:19, 24
implementing 10:3 18:5,
 15 164:2 175:10 186:25
 187:4 222:12
implicate 230:8
implication 236:23
implied 187:11 207:23
import 78:12 79:14
important 31:24 49:7
 51:4, 9 84:11, 13 167:7
 169:14
improper 77:25
improperly 78:10
improve 184:16
inappropriate 156:8
 209:17
include 123:15 124:4
 125:4 128:3 145:11
 201:7 203:19 229:1, 2
included 21:9 23:2
 46:17 48:3, 5 105:3
 109:19 115:13 123:5
 223:3
includes 23:10 34:5
 41:11 81:25 168:11
including 31:23 98:4
 122:9, 19 127:24 164:2
 167:3 170:18
income 130:9, 22
incorporate 37:25 65:17
Incorporated 6:4, 5
 55:12
incorporates 30:8 37:11
independent 84:25
 239:12
independently 134:6
indicates 216:18 221:9
indicating 52:18
individual 39:19 228:13
individually 11:15
 134:11
individuals 11:24 142:8
Industrial 9:5

industry 10:19 11:3, 7, 8
 151:10 199:17
influence 173:25
influences 173:15
InfoMaker 92:16, 17, 25
inform 53:24 109:8
Information 17:19, 20
 21:11 22:14 40:1 57:8
 63:19 67:20, 21 68:6
 76:16 77:12 78:4 80:25
 81:13 84:22 85:1 88:14
 89:12 95:3, 4 98:5
 100:16 104:4 108:4
 120:5 121:20 123:12, 13
 124:6 125:17, 24 126:8,
 19, 25 127:23, 24 128:3,
 4, 10, 12 131:12, 23
 132:21 133:13, 18, 24
 135:4, 11, 14 137:1, 24
 139:22 140:23 141:21,
 22 142:9 143:4, 17, 24
 145:10, 12, 19 146:1
 175:20 179:24 200:13
 206:23, 24 209:18
 210:11 213:23 215:4, 11
 221:17, 23 222:8 223:8
 234:1, 13 236:10
infrastructure 160:19
 182:21
initial 69:6, 8 185:16
 214:16, 21 215:3
input 108:18 185:23
inside 12:3 27:10
install 170:6
instance 21:12 23:25
 31:7 58:5 91:9 108:16
instructed 23:4, 8
instruction 83:2
integrate 90:19
integration 182:19, 22
 183:5, 8, 9, 12, 18
integrations 182:19
Intellect 17:19
intellectual 20:20, 25
 29:13, 14, 19, 22 30:2, 6,
 8, 10, 24 31:6, 13, 16, 24
 32:4, 15 34:3 35:20, 25
 36:17 37:10 53:19, 21
 55:8, 13 57:13, 25 59:18,
 20 60:5 61:19, 23 62:2,
 3, 10, 17, 21 63:4, 15
 65:2 69:25 80:15 84:14
 89:18 90:3 91:1 95:25
 106:11 115:24 117:17
 130:5, 10, 17, 23 131:17
 132:5, 6, 16, 21 144:14
 195:5, 13, 23 206:17
 213:22 214:13 215:11
 217:23 218:24 219:10
 220:12, 22 221:7 225:21

229:16 232:17 233:1
intended 83:9
intent 57:12
intentional 145:2
interact 12:2 90:19
interacts 12:2
interest 173:16 229:20
interested 18:5 162:17
 164:4 165:12 200:14
 240:19
Interesting 39:13
interim 197:21
intermediary 113:25
internal 64:12 70:19
 191:3, 9 193:10
internally 29:15 31:2
 56:23 62:25 70:11
Internet 100:22 126:14
 131:24 132:12, 22 143:5
interpret 48:12 51:11,
 13 144:20 152:1 175:9
interpreted 45:4 56:19
INTERROGATORIES
 4:21 119:11, 13 120:8,
 11 122:23 222:22 223:4
interrogatory 122:23
 123:3, 21 124:4 125:3
 126:1, 3 127:4 132:25
 133:1, 4, 5, 9, 12, 16
 134:12, 14, 16, 24 135:6
 136:5 137:2, 5 138:5
 139:5 143:10 146:12
 222:22, 25
interrupt 203:16
introduced 21:17
introduction 13:4
intrusion 41:18 42:2
inventory 37:13
investigate 223:5 230:19
investigating 223:2
investigation 13:12
investor 207:11
investor-owned 201:21
 205:4 207:5, 8 208:9, 18
 229:3
invited 220:1, 4
involuntarily 13:9
involve 10:4 11:24, 25
 19:7 25:9, 12 118:17
involved 13:11 16:19
 17:14, 20, 22, 24 27:24
 28:15 30:15 50:10
 59:10 60:8 61:1, 8, 12
 72:12 98:18 105:2, 7
 108:20 128:20 138:2, 3
 141:25 146:16 155:21
 158:4 166:19 167:22
 169:20 173:23 182:6
 185:3 186:2 195:2, 8, 11
 196:9 221:14 228:2, 4,

12
involvement 17:12
involving 118:18 119:1
IOU 167:12, 23 174:18
IOUs 174:24
IP 4:13 70:24 101:15,
 16, 18 102:11, 14, 16
 104:12 108:7, 9 109:7,
 17 110:6, 21, 25 111:5,
 14, 25 112:5, 8, 11, 15
 114:15 115:9, 13, 15
 117:9 146:24 147:14
 148:3 156:1, 7 210:16
issue 13:11 39:4, 14
 128:18 163:24 164:19,
 23 165:10 166:23 167:7
 169:19
issues 178:1, 21
item 84:17 135:25
 136:6, 15, 16, 18
items 65:18 83:4, 6
 86:4, 6, 14, 20, 21 122:8,
 18 125:4, 6, 8 130:2, 16
 135:18 137:21 160:19
 213:21
its 18:18 31:6 32:9, 17,
 18 35:24 37:8, 19 50:19
 55:15 62:10 63:15 66:7,
 8 67:24 68:2 80:8 88:3
 90:15 91:20 115:22
 121:19 123:11 128:11
 132:20, 21 141:6 163:20
 184:5, 6 210:16 214:24
 215:16 217:11, 16, 23
 218:24 219:9 222:3
 230:1, 24 234:9

< J >
Jackson 1:14 239:11, 21
 240:6, 24
JAMIE 3:18 13:6, 8
 38:25 45:16 47:15
 223:14 224:24
Jankovic 33:18, 22 34:9
Jason 6:11 26:22, 24
 30:12 32:5 198:14, 17
 199:11 224:22
Jeff 61:14 72:17 218:11
JIM 1:12 3:3 6:23 7:4
 14:1 61:5 95:5, 24
 99:16 153:2 179:12
 190:19 219:24 239:4
Jimmy 61:14 72:11
 218:11
jmayer@robbinsfirm.com
 2:6
JMI 27:12
job 9:15, 25 10:24
 11:19 161:14 228:18
Joe 50:12 103:2 196:5
 197:6

Joel 111:22 180:25
181:5 190:20, 25 191:1,
4, 6, 16
JOHN 3:22 30:20 35:2
43:23 49:4 72:16, 17, 22
148:16, 24 151:11, 15, 18
152:8 177:21
join 17:18
joining 20:19
Jonathan 61:3, 9 63:21
175:17, 24 218:6 219:19
Josh 65:3 70:12 164:6
JOSHUA 2:4 3:5, 7
6:10 239:14
Joyce 138:17
judge 7:12 116:19
127:6 128:13, 17
judge's 37:3 116:12, 15
Judicial 239:8
July 52:11, 22 233:24
234:8, 25
jump 7:15
June 9:20 110:3
junior 224:5
jurisdictions 130:10, 22

< K >
Kanav 200:5, 9
keen 180:2
keep 22:24 51:13 70:13
85:23 101:8 175:6, 11
keeping 49:6 50:24
51:8, 12
keeps 23:22
Keith 61:6
Keller 42:13
Kelly 30:20
Ken 30:20
kept 13:1, 14, 23 14:5,
25 26:20
Kevin 42:13 112:3
196:5
KEY 2:11 101:24
130:4, 16
kickoff 118:15, 19, 24
Kim 57:19
kind 11:4 15:23 16:12
18:7, 12 19:3 23:17
31:15 40:22 101:21
106:14 128:22 130:25
193:21 217:6 225:16
Kleczyński 115:2 150:6
232:10 233:4
knew 13:3 17:7 32:5
89:19 90:12 104:8
109:11 144:23 147:16
156:9 225:24 226:3, 19
know 8:4 10:11 11:20,
25 12:20, 22, 24 13:6, 8,
10, 19, 21 14:1, 3, 13, 15,
18, 20, 22 15:16 17:15,

22, 24 19:7, 19 20:10, 11,
21 21:9, 10, 15 22:25
24:3, 6, 8 25:17, 22, 24
26:17, 22, 24 27:1, 22
28:6, 23 30:11 31:2, 14,
15, 24 32:1 33:6, 18, 19,
20 34:1, 9 35:2, 11
36:11 38:13 39:10, 21
42:10, 20 43:6 44:15, 21
45:16 46:2, 3, 6 48:4
51:4 52:2 53:2, 12, 23
54:23 55:1 56:23, 24
59:2 61:25 62:6 63:7
64:12 65:10 67:10, 23
68:4 71:16, 17 72:9, 23
75:4 78:5 85:20 87:24
90:11 91:20, 24 92:17
96:9, 11, 15, 20 98:11, 13
99:24 100:1, 20 104:23,
24 105:6 110:18, 24
112:12 115:2, 20 116:2,
7, 15 118:21, 22 120:25
122:5, 25 126:3, 19
128:21 129:16 132:4, 19
133:4, 8 134:9 137:6
138:2, 7, 22 139:8, 15, 21,
25 141:10 142:22 144:7,
13 145:8, 17, 25 146:22
147:4, 13, 15, 24 150:15
153:2, 22, 25 154:14, 23
157:11, 12 158:17, 23
159:7 160:5 162:25
163:1 164:3 166:23
167:15 171:6, 9, 11
175:24 177:7, 11 184:24
185:8 186:23 188:23
189:7, 17 190:3, 10, 16
191:13, 23 193:19, 21
195:1 196:14, 16, 23
197:1 198:1, 2, 24 199:3,
7, 15, 16 200:11 204:23
205:14, 16, 20, 22 206:9,
11, 12, 14, 15 207:2, 4
208:19, 22, 24 209:6, 15,
25 210:6, 15, 19, 23
211:22 212:9 215:21
219:12 224:3, 4, 15, 17,
25 227:5, 12 228:9
229:2, 23 230:10, 13, 14,
16 234:2, 10 237:3, 22,
24
knowledge 43:13, 16
66:7, 18, 22 67:1, 4 68:1
86:23 89:21 120:3
125:22 143:14 153:19
176:1, 25 189:3 206:21
211:17, 25 214:23
215:19 227:8 235:20
knowledgeable 43:15, 18
44:22

known 28:16 44:6
55:25 191:8 225:19
knows 175:20
Kristin 57:18

< L >
label 166:9
labeled 133:13 140:1
labels 137:25 140:23
lack 28:2 187:5
land 172:13
Lantukh 10:7, 13 43:12,
19 44:17 46:12 74:24
80:23 88:18 109:12
Lantukh's 89:9
large 19:2 50:15
largely 179:13
larger 18:15 109:2, 4
largest 201:14
late 73:4
lawsuit 100:12 116:7
155:21
lawsuits 35:12
lawyers 75:15
layer 217:7
layman's 77:15, 24
lays 84:16
lead 11:17 210:9
214:12 224:23
leader 10:20, 21 18:13
leaders 11:23
leadership 12:13, 14
15:8 71:5 72:13 102:24,
25 179:13 196:1, 3, 18
leading 12:7 14:14, 23
88:6
leads 81:20
learn 94:23 175:20
211:20
learned 38:21 42:16
43:2 63:13 68:5 77:18
85:9 89:3 95:16 116:18
122:11 124:6, 15 125:17
128:3, 9 211:22 233:17
learning 95:23
lease 201:24 202:11, 16
leave 197:15 224:10
led 17:23 60:10 63:14
88:13, 14 151:23 152:15
161:20 190:16
ledger 203:12
left 12:22 13:1, 8, 14, 21,
23 14:3, 5, 8, 20, 25 15:9
194:5 197:18 224:14
legacy 19:19
legal 15:19 16:6 20:15,
22 28:11 31:21 33:6
37:12 114:23, 24 116:11
123:23, 25 125:7 126:23
127:7 130:5, 6 131:20

134:4 181:1 193:10, 12
222:5
legends 140:9
Leo 61:5 219:24
LETTER 3:24, 25 4:8,
13, 17 53:6, 16 54:2, 17
56:20 58:11, 13, 21, 24
63:3 64:19, 22, 23 67:4
69:16 70:8 76:9, 11, 14,
20 77:1 78:1, 7 80:1, 19
81:25 82:6 84:16, 24
85:18, 21 88:14 94:7, 21
102:12, 14, 19 104:13, 17,
18, 21 105:6, 18 107:3
110:16 117:22, 25
123:14 147:18 214:16,
21 215:3, 15
letters 34:24 101:22
103:8, 19, 24, 25 104:11,
14 110:18, 24 230:23
231:4, 6
letting 132:4
level 43:16 50:3 77:9
140:16 167:8
leverage 67:12, 21
leverages 24:5
leveraging 80:15
liability 63:25 64:5
205:15, 21
Liberty 95:19, 23, 25
96:15 97:1 99:14, 22
186:12, 14, 16, 25 187:4,
20 188:7, 24 189:3, 6, 13
220:16, 23 224:19 225:9,
12
library 145:9
license 21:12 36:13
60:4 66:12 67:11 79:16
91:6, 17 93:10 96:1
154:4, 7, 11, 19 156:12
170:10 209:13 212:3
licensed 173:12
licenses 9:12 155:1
157:3
licensing 36:17 96:1
lied 75:7
Lift 170:1, 5, 9 171:18,
25 172:1, 24
Light 51:19, 25 52:1, 16,
18 54:4, 14, 19 55:4, 8,
15 60:6, 9, 12, 13 61:2,
17 62:4 63:11, 12
131:23
Light's 62:12
limited 122:9, 19 127:25
141:20 183:16
limits 50:11
Linda 42:13
Lindy 61:14 72:11, 13
218:11

line 102:11 118:23
 146:16 179:13 194:21
 lines 7:20
 link 41:11, 14 46:2, 4
 LinkedIn 38:11 46:2, 3
 192:21
 list 37:1, 8, 15 61:13
 63:7 123:5, 15 127:25
 129:20 131:23 134:18,
 22 135:3, 8, 12, 13, 14, 18,
 25 136:6, 15, 16, 18
 145:14, 15, 17, 22 182:15
 listed 40:9 118:13
 121:21 122:9, 18 123:20
 124:4 130:2 173:22
 litigation 210:20 221:3
 222:4, 7, 18
 little 7:17 40:20 74:5
 128:7 175:19
 Littlefield 1:16 2:4 6:6
 live 228:10
 LLC 1:16 2:4
 LLP 6:13
 located 16:25
 LOG 4:20 118:7, 22
 logical 170:17
 logo 92:23
 long 7:8 20:18 36:5
 141:12 196:14, 24 224:2
 longer 70:23 96:18
 99:6 106:15 107:13, 21
 108:3 113:19 132:5
 141:11 160:2 172:25
 175:11 178:7 182:9
 196:11
 long-term 49:7 51:9
 look 15:14 19:11, 24
 38:18, 24 40:19 43:21
 45:12 47:8 48:23 49:4,
 24 52:6 53:22, 24 62:15
 64:25 68:10 69:12
 73:12, 18 74:5 76:4
 82:17 83:4 86:24 92:5
 94:4 97:5 99:1 100:5
 102:8 105:14 109:24
 111:19 117:13 119:8, 19
 121:1, 11 122:22 127:11,
 20 129:24 130:7 132:25
 133:1 134:12 137:5
 148:7 151:12 152:18
 160:22 161:4 176:2
 177:15, 21 180:5 186:6
 189:15, 25 198:7 201:12
 232:11, 13 234:25
 looked 27:15 41:20
 52:11 82:11 87:9 88:17
 103:17 134:10, 17 140:8
 144:9 145:18 176:2, 4
 189:7
 looking 13:4 32:20
 39:25 42:1 48:13 87:15

93:11 126:25 172:6
 178:9, 12 184:16 198:12
 looks 43:5 117:14
 202:10 238:11
 losing 146:25 154:14, 22
 lost 51:15, 18 52:15
 54:3, 19
 lot 20:10 105:25 107:17
 121:1 160:3
 loud 235:9
 lower 18:17, 25 19:5
 154:12, 13, 20 235:13, 17
 lowers 154:8
 lowest 52:22
 LUCASYS 1:6 6:4, 10,
 11 14:9 15:5, 18 16:16
 20:6, 9 38:10, 22 39:12,
 23 40:8 41:11, 14, 21
 42:14, 16 43:25 44:7, 11
 45:20, 25 46:13, 25
 49:12, 15, 18, 20 51:19,
 22 52:25 53:3, 4, 6, 7, 12,
 13, 16, 19 54:2, 4, 12, 17,
 23 55:5, 6, 15, 18 56:20
 57:5, 7 58:11 59:3, 8
 60:1, 14, 23 61:17, 25
 62:1, 4, 9, 17, 19 63:5, 14
 64:1, 17 67:17, 23 68:2,
 4 69:20 70:4 71:1 74:9,
 18 75:1, 20, 21, 24 76:15
 77:2, 10, 24 78:9 79:22
 80:7, 8, 16 81:5, 16 82:2
 83:4, 6 86:5 87:14 88:2,
 25 89:20 94:24 95:17,
 23 96:19, 20, 23 97:20,
 23 98:4 99:6, 21 100:8,
 13 101:15 102:2, 3
 104:4, 9, 17, 18, 21 106:7,
 10, 14 107:2, 20 108:4
 114:25 119:11 122:8, 17
 123:4, 5, 14, 19 124:3
 125:4 127:19, 24 128:1,
 10 131:24 132:22
 135:19 136:7, 19 147:1,
 13, 17, 22 148:2 153:17
 155:3, 8, 10, 16, 20, 23
 156:2, 15 170:24 174:21
 185:5, 7, 9, 12, 17, 20
 186:1 188:23 189:4
 190:7, 17 192:21, 22, 23
 193:5, 22 207:20, 24
 209:9 210:10, 17, 25
 212:11, 17, 22 214:9, 17,
 22 215:1, 5, 16 217:24
 218:23 219:10 220:11
 221:6, 18 222:3, 8, 17
 225:20 226:11 229:8, 12,
 13, 24 230:3, 7, 12, 21, 25
 231:7 232:3, 22 233:1,
 25 234:9 236:11, 15

240:11
 Luisa 97:13
 lunch 93:14 101:8
 116:21 117:4
 lying 34:17, 20

 < M >
 MACHINE 4:6 92:7, 8
 machines 37:19, 24
 112:18, 23
 main 32:23 139:13
 maintain 33:6 51:2, 5
 106:4 121:19 160:19
 175:11 221:22
 maintaining 51:3
 maintenance 215:24
 230:11
 making 21:21 53:20, 24
 155:16 160:5 163:9
 219:6
 manage 32:14 33:7
 35:6 90:1
 managed 24:9 28:15
 57:18
 management 100:21
 200:21
 manager 111:23
 Manna 111:23 191:2
 manner 56:25 114:16
 145:2 151:6 156:8
 187:7 204:22 229:19
 237:1
 manually 208:23
 manuals 30:9
 map 82:1
 Marc 103:3
 Marietta 8:20
 Mark 190:20, 25 191:2,
 4, 16
 MARKED 3:15 15:11
 19:9 38:16 40:13 45:9
 47:6 48:21 52:3 58:16
 64:15 68:7 73:6 76:1
 92:3 94:1 95:10 97:2
 98:23 100:2 102:5
 103:11 105:11 109:21
 110:10 111:17 117:12
 118:3 119:5, 17, 22
 120:12, 20 129:1 148:5
 152:16 161:7 166:1
 177:12 181:24 186:3
 189:22 194:17 198:4
 199:25 232:7 234:18
 market 19:3, 4 20:7
 67:14 149:8, 13, 21
 150:20 152:12 221:4
 marketed 20:11 67:13
 marketing 14:14 42:5
 81:6, 10, 22 137:14, 19
 138:10, 12 207:20

marketplace 209:3
 markets 71:6, 10 228:25
 marriage 240:17
 massive 188:14
 master 66:24
 material 138:18
 materials 24:4 42:5
 88:13 137:12, 18 139:1
 140:1, 8, 9, 12 146:4, 11
 Matt 43:22 166:14
 196:9, 13
 matter 6:4 19:4 99:16
 240:10
 matters 208:24
 MAYES 2:4 3:5, 7 6:10
 7:1 15:12 16:1, 4 18:24
 19:10 20:13 26:16
 28:10 29:1, 7, 18 31:11
 33:17 34:6, 16, 23 37:22
 38:17 40:3, 14 42:6, 23
 43:9 45:10 46:19 47:7
 48:8, 22 49:16 52:4
 53:15 54:8, 15, 22 56:4,
 10 58:17 59:12 63:20
 64:16 65:4, 7, 25 66:6,
 16 67:3, 15, 22 68:8, 19,
 21, 23 69:5, 7 70:9, 14,
 15 71:15 72:8 73:8
 76:2 77:7, 22 78:8, 16,
 18, 22 79:5, 13, 21 80:2,
 12 81:18 82:25 83:14
 84:3, 15 85:6, 22, 25
 86:2, 9, 13 88:23 89:5,
 15 90:4, 13, 24 91:11, 19
 92:4, 24 93:11, 18 94:2
 95:11 96:21 97:3 98:1,
 24 100:3, 25 101:7, 12,
 13, 25 102:6 103:12
 105:1, 12 106:12 107:4,
 11, 25 108:6 109:3, 10,
 16, 22 110:11, 21, 23
 111:4, 11, 18 113:7
 114:8, 20 116:21, 24
 117:3 118:4 119:6, 18,
 23 120:14, 18, 21 121:9,
 10 122:15 123:9 124:13,
 22 125:14, 15, 20, 25
 127:2 128:6 129:2
 130:14 131:8, 21 132:2,
 10, 18 135:16, 23 136:3,
 13, 24 139:24 143:22
 145:20 146:3 148:6
 149:25 151:4, 19 152:17
 156:14, 21 159:18, 25
 161:2, 8 162:2 164:7, 13
 166:2 177:13 181:19, 25
 184:9 186:4 189:23
 193:3, 14 194:3, 9, 12, 18
 198:5 200:1 206:20
 211:3, 9 212:15, 23
 213:5, 13, 20 214:14, 20

215:25 226:7, 14, 20
 231:10, 13, 15, 22 232:8
 233:16 234:6, 14, 19
 235:22 236:19 237:5, 11,
 25 238:3, 7, 10, 13
 239:14
MBA 9:8
McManus 111:22 191:6
mean 11:22 17:7, 17
 18:3, 10 19:2 20:19
 22:13 23:9 28:11, 12
 29:6, 21 30:17, 25 31:22
 39:19 40:9 41:25 42:3,
 19 43:5 44:5 46:4
 49:17 50:11 53:16
 56:20 64:12, 17 67:10
 69:20 71:9, 16, 17 72:3,
 4 73:9 75:3 80:14 81:9
 84:8, 16 85:22 90:23, 25
 95:20 97:22 98:2 101:1
 106:3 114:6 130:24
 140:5 144:7, 20 145:25
 152:7 154:21 155:20
 156:9 158:6 162:13
 163:10 170:9 173:9
 175:8 178:3 180:11
 181:4, 22 182:17 184:14
 188:6 192:17 202:8
 203:16 207:20 208:25
 209:8 215:18 217:6
 224:21 225:5 228:1
 230:19
meaning 28:8 45:6
means 77:15, 24 175:3
 186:23
meant 45:1 54:9 71:18
 87:13 110:21 113:17
 154:16, 17 159:19 202:5
mechanically 183:3
mechanism 179:17
medication 8:9
meet 62:24 175:18
meeting 42:14 71:5
 72:13 74:21, 23 75:11
 80:24 81:16 102:23
 148:16 167:10 175:17,
 18, 24 177:5 190:22
 198:19, 21 217:22 218:2,
 5, 10, 14, 16, 21, 22 220:3
meetings 75:8 98:5
 103:1 119:1 217:20
member 153:10 168:3
members 17:18 99:12
 102:25
memory 120:9 196:23
MENKEE 2:17
mention 104:18 203:25
mentioned 57:15, 24
 58:4 64:20 68:17 69:1
 72:25 80:19, 22 144:13

145:1 205:1 207:16
 211:13 227:24
mentioning 203:23
message 150:16
messages 14:7 15:2
met 15:22
method 89:25 171:10
 181:6 183:20 205:14
methods 162:15
Michael 41:9 43:17
 188:15
Michigan 157:13
mid-November 180:3
migrated 111:6
migration 178:21
Mike 25:22, 24 26:3, 7,
 10
million 171:20
mind 29:24 98:7
 116:23 121:23 147:12
 148:17 210:24 213:9
 229:20
minute 58:22 64:20
 115:12 134:18
minutes 93:13
misappropriated 122:8,
 17 123:4, 5, 15, 19 124:3
 125:4 135:20 136:7, 19
 225:20 232:3 233:25
 234:9
misappropriating 60:14,
 24 218:24 220:12 221:7
misappropriation 76:15
 77:2, 10 226:18
missed 68:20
misspoke 12:11
misstates 236:18
mistake 237:13
mistaken 26:5
misunderstanding 104:8
mix 229:4
Modder 142:2, 5, 8, 16
 143:18, 24
model 65:1, 15, 21 66:8,
 19 78:10 88:3, 5, 8
 90:20 91:14 168:22
 169:5
models 211:20, 23, 25
modified 230:14
modifying 25:10
module 21:4 87:5, 14
 88:3 203:2
modules 19:1 21:24
 151:12 203:3
Monday 102:23 177:22
months 22:11 45:19
 165:11 190:13 228:9
morning 7:2 166:15
mornings 102:23
motion 116:6, 7, 12
motivation 184:10

move 158:9 168:22
 169:4 181:14 183:10, 17,
 20, 21 185:1
moved 10:19 113:19
 165:13 178:16, 19
moving 182:20
multiple 10:2 19:6
 187:1
multi-release 225:14
municipals 229:2
mutually 175:20, 21

 < N >
name 7:2 14:15 36:6
 46:5 55:23 83:19 84:10
 157:18 186:14, 15, 16
 197:25
named 15:8 31:25
 83:22 193:15 197:24
 223:15
names 6:8 31:18, 23
 83:9 84:17, 18, 21
 203:11, 18
naming 84:5
Nathaniel 161:12
 179:11 181:5
natural 7:14
Neal 103:3 196:5
near 116:18
necessarily 28:7 107:9
 145:17 235:25
necessary 86:6, 15
 183:10
need 7:20 18:14 45:6
 85:14 91:9 94:12
 108:16 112:5, 8 113:25
 124:13 125:12 131:3, 10
 183:20
needed 21:5 22:17
 50:15 109:8 160:6
 178:10 189:17 193:9
 206:10
needs 18:12 34:10
 183:17
negotiating 182:4
negotiations 17:20
never 23:4 27:5 28:19
 33:22 37:14 85:8 236:9
new 23:1 26:8, 10 39:3
 57:6 71:22 72:5 137:1
 149:15, 18 151:12 164:8
 168:20 170:18
NextEra 51:23 59:23
 74:10 219:8, 9, 11, 16, 22
 220:11
NextEra/Florida 51:19
NextEra/FPL 59:14
Nguyen 46:5, 6, 13
 191:9 193:5
non-disclosure 25:24
 26:1, 4, 13, 25 27:6, 10,

17, 23 32:10, 17, 22, 24
 33:2, 10 154:1 194:1
 211:16
non-PowerPlan 24:22
North 175:3 201:21
 229:1
NORTHERN 1:2
Northwestern 9:10
note 112:3 177:24
notes 179:20 180:24
noteworthy 48:9
notice 15:17
November 71:5
NRG 198:20, 25 199:7,
 18, 23 201:24 202:10, 15
number 8:21 18:15
 73:19 74:5 77:14, 24
 78:16 81:5, 24 87:3
 121:11 122:24 125:5, 17
 126:7 130:9, 21 133:1
 134:12, 16, 25 136:5
 137:6 146:12 166:11
 170:2
numbered 81:5 87:20
 131:16 134:18
numbering 121:4
numbers 78:15 133:2
numerous 174:17
NW 1:16 2:5

 < O >
O.G.G.A 239:17
object 99:20 114:9
 226:7, 14, 20
Objection 18:19 20:8
 26:6 28:4, 22 31:8
 33:12, 25 34:12, 19
 37:20 39:24 41:22
 42:18 43:4 46:15 47:2
 48:1, 18 49:13 53:9
 54:6, 11, 20 59:9 63:17
 65:23 66:3, 25 67:6, 18
 69:2 70:6 71:11 72:2
 77:5, 16 78:1 79:1, 11,
 19, 22, 24, 25 80:5, 9
 82:20 83:11, 25 84:7, 24
 85:17 88:20 89:1, 13, 23
 90:9, 21 91:4, 15 92:21
 93:8 96:17 97:24 98:20
 100:23 101:20 104:22
 106:8, 25 107:8, 24
 108:24 109:6, 13 110:20
 111:1, 8 113:5 114:5, 17
 123:7 124:10 125:11, 12,
 19 126:22 130:11 131:5,
 18, 25 132:7, 14 135:10,
 21 136:1, 8, 20 139:19
 143:20 145:13, 23
 149:22 151:1, 16 152:13
 156:11, 18 159:14, 22
 160:24 161:22 181:16

184:7 193:1, 8 206:18
212:13, 19 213:1, 10, 17
214:10, 18 233:10 234:4,
11 235:19 236:18, 24
237:9
objections 29:5, 11
123:11
objective 101:24
obligation 74:8
obligations 31:16 96:1
221:25 230:9, 17
obviously 17:17 21:18
25:13 32:1
occur 114:12
occurred 38:15 213:4
October 58:25 123:14
177:18 214:22 215:4
offer 18:17 181:1
193:22, 24 204:15
offered 192:24 193:21
offering 41:15 50:14
80:7 156:16 192:24
193:6 204:23 207:4
212:4, 7 216:24
offerings 67:23 68:2
184:17 215:5 232:18
233:2
offers 24:24 204:2, 12,
13, 14
office 81:17
officer 197:12, 18
official 47:19
oftentimes 56:24
Oh 120:18 202:5 213:6
225:5 238:8
OHIO 2:12
oil 229:2
Okay 7:8, 10, 18, 19, 22,
23, 25 8:1, 4, 5 9:22
10:16 11:16 12:7, 15, 20
13:6, 19 14:16 15:13, 16,
20 16:14, 23 17:2, 6, 9,
12, 22 18:25 19:21
20:18, 24 21:14, 23 22:8,
12, 16, 22 23:4, 22 24:2
25:9 26:3, 22 27:5
28:16 29:2, 8 30:11, 15
31:4 32:9 35:11 36:23
37:7, 14 39:13, 17, 21
40:4, 11, 15, 24 41:2, 3, 8,
10, 17 42:7, 24 44:6
45:11, 14, 19 46:2 47:8,
11, 18 49:11, 17, 21, 24
50:13, 17, 22 51:24 52:5,
8, 10, 14, 20, 25 53:5
54:9, 23 55:3 57:3, 9
58:10 59:2, 6, 13 60:17,
20, 22 61:1, 8 62:18
63:21 64:22 65:10, 15,
19 66:17 68:9, 12, 20
69:5, 8, 12, 14, 18 70:10,

19, 22 71:3, 20 72:12, 25
73:15, 18, 23 74:4, 15
75:6, 16 76:3, 6, 20 77:1,
21 78:5, 9, 19 79:6, 14
80:13, 20 81:4, 24 82:13
83:4, 8, 18, 22 84:4, 21
85:7, 10, 11, 16, 22 86:11
87:1, 8, 12 88:1, 11 89:9,
16, 19 91:12 92:10, 15
93:4 94:7, 10, 15, 19, 23
95:2, 5, 7, 19 96:3, 6, 13
97:8, 18 98:15, 19 99:4,
9, 12, 20 100:8, 15, 20
101:1, 4, 7 102:1, 7, 11,
18 103:8, 16 104:1, 7, 11,
15, 19 105:2, 9, 13, 16, 20
106:19 107:12, 16
108:12 110:2, 12, 16, 18
111:5, 12, 22 112:16
113:22 114:4, 13, 21
115:12 116:9, 15, 21, 25
117:2, 16 118:5, 11, 21
119:1, 7, 10, 19 120:7, 25
121:15, 17, 24 122:3, 6, 7
123:1, 2, 18 124:18, 23
125:14 126:1, 5, 6 127:3,
11, 17, 18, 21 128:7, 13,
17, 22 129:3, 6, 9 130:20
131:15, 22 132:3, 19, 24
133:7, 11, 16, 20 134:3, 5,
9, 12, 15, 16, 22 135:5, 17,
24 136:4, 14, 25 137:7,
12 138:4, 11, 20 140:18,
22 141:3, 9, 12, 15, 19
142:7, 15, 18, 22 143:3, 7,
15 144:6, 15, 19 145:3,
21 146:4, 7, 19, 21 147:3,
13, 16, 23, 25 148:10, 14
149:1, 3, 6 150:1, 9, 14,
18 151:5, 9, 15 152:10,
20, 21 153:4, 11, 16, 19,
22 154:5 155:3, 7
156:15, 22 157:1, 7, 18
158:8, 13, 16, 19 159:1
160:17 161:9, 12 162:3,
8, 22, 25 163:3, 10 164:9
165:9 166:3, 6, 12 167:2,
6, 10, 14, 20 168:5, 10, 17,
20, 25 169:3, 7, 18, 23
170:1, 9, 16, 21 171:6, 15,
18 172:4, 12, 16, 18, 23
173:4, 8, 14, 20, 24 174:4,
8, 15, 21, 24 175:5, 13
176:18, 24 177:7, 14, 16,
17, 23 178:3, 11, 16, 21
179:2, 7, 10, 19 180:1, 13,
19, 22 181:20 182:1, 4, 7,
12, 17 183:24 184:3, 22
185:13, 15, 23 186:5, 9,
16, 18, 23 187:9, 13, 16
188:2, 6, 9, 13, 18 189:5,

10, 15 190:15, 19 191:3,
8, 13, 15, 16 192:1, 7, 11,
12, 17, 22 193:21, 25
194:6, 19 195:2, 12, 17,
21 196:1, 11, 14, 17, 21
197:3, 10, 23 198:1, 6, 19
199:7, 10, 17, 22 200:2, 5,
17, 22 201:7, 9, 17, 22
202:8, 14, 20 203:10, 14,
21 204:1, 4, 18 205:17,
23 206:6 207:10, 16
208:9, 11, 14 209:4, 15
210:23 211:5, 13, 24
212:4, 7, 10 213:25
214:21 215:8, 13, 16, 20,
25 216:2, 10, 17, 20, 23
217:3, 10, 15 218:1, 4, 7,
10, 14, 16 219:2, 5, 8, 12,
16, 22 220:2, 5, 10, 18, 23
221:2, 17, 21, 25 222:2, 6,
11, 14, 25 223:6, 13, 20,
24 224:2, 7, 10 225:11
226:9 227:1, 5, 12, 16, 24
228:5, 16 230:3 231:10,
11, 14 232:13, 21 233:4,
7, 20, 23 234:15 235:8,
23 236:1, 5, 23 237:6, 12,
16, 22 238:4, 8, 16
old 26:9 151:11
on-boarded 23:11
on-boarding 21:8 23:2
27:21
once 13:3 17:17 70:3
114:25
ones 121:25 145:4
147:3 172:12
one-sentence 192:2
ongoing 136:10, 12
183:12, 17 210:20
221:19 222:4 225:8
228:2, 8
on-premise 25:14
157:16, 17 170:5 177:25
178:4, 13 179:4 181:14
184:19 185:1 191:10
on-premises 157:14
158:9, 13 160:10 165:3
open 91:21, 23, 25 92:15
93:5 217:12, 16
operated 227:9
operating 91:13 144:8
197:12, 18
operations 11:18 25:3
57:20
opinion 188:10
opportunities 19:24
146:25 151:22 171:23
172:7, 13
opportunity 49:8 50:23
51:10 52:16 53:6 54:1,
10, 17 56:20, 24 98:12

128:14 154:15, 23, 24
171:19, 25 191:17
opportunity-based 172:2
opposed 213:8
ops 171:19
option 98:17 163:4, 7
options 162:21 163:16
165:21, 22 168:13 169:3
170:18 177:3 178:9
179:5 185:2 191:24
192:24
Oracle 171:15, 17 218:18
oral 7:20 30:22
order 18:18 27:14 37:3
50:8 91:14 108:13
116:12, 16 138:2 156:2
183:1 206:13 237:7
238:5, 7, 8
ordered 128:18, 23
organization 10:20
57:18, 19, 20 201:10
223:21
organizations 168:2
organize 84:9 131:12
organized 31:22 32:2
original 55:23 118:23
215:15
outcome 240:19
outside 61:11 100:14, 15,
19 115:24 116:3 183:22
226:11
overall 22:6 80:14
84:11 162:11 175:11
217:1
owned 207:11
owner 20:14 28:1, 6, 8
137:15
owners 137:17

< P >

p.m 93:17 124:21
164:12 177:22 194:6, 8
211:5, 8 216:3, 5 231:18,
20 238:20
P-188 3:16
P-189 3:17
P-190 3:18
P-191 3:19
P-192 3:20
p-193 3:21
P-194 3:22
P-195 3:23
P-196 3:24
P-197 3:25
P-198 4:1
P-199 4:2
P-200 4:3
P-201 4:4
P-202 4:5
P-203 4:8

P-204 4:9
P-205 4:10
P-206 4:11
P-207 4:12
P-208 4:13
P-209 4:14
P-210 4:15
P-211 4:16
P-212 4:17
P-213 4:18
P-214 4:19
P-215 4:21
P-216 4:22
P-217 4:23
P-218 4:24
P-219 4:25
P-220 5:1
P-221 5:2
P-222 5:3
P-223 5:4
P-224 5:5
P-225 5:6
P-226 5:7
P-227 5:8
P-228 5:9
P-229 5:10
P-230 5:11
P-231 5:12
P-232 5:13
P-233 5:14
PAGE 3:3, 15 38:24
43:21 46:3 47:14, 15
49:5, 24 68:15, 18, 19, 24
69:9, 23 73:18, 24 74:4,
6 76:14, 24 77:8, 9
78:17 81:4 82:7, 11, 13
84:17, 22 86:8, 9, 10, 24
87:9, 10, 19, 21, 23 92:10,
12 94:10 97:12 105:24
120:22 121:4, 5, 8, 12
122:4, 24 126:2 129:12,
14, 20, 24 130:7 133:2, 3
134:13 140:18 148:15
153:2 154:5, 6 155:11,
15, 16 166:8 174:8
176:12 177:20 179:10
180:12 186:10 198:13
200:7 216:17 235:2
pages 40:22 87:8
127:13 240:13
paid 13:17
paragraph 19:21 46:3
49:5 64:25 65:4, 5
73:24 74:5 81:24 82:11,
15 87:15, 24 92:13, 14
94:11, 15 121:11, 21
122:1, 3, 4, 18 127:20
129:24 130:7 137:8, 9
151:7, 9 166:13 167:20
179:20 186:10 189:15,
16 232:13 235:1, 4

paragraphs 121:4
127:12, 15, 17 130:2, 16
parallel 228:17
Park 103:4 196:6, 19, 24
Parkwood 8:18
part 23:16 29:14 30:10
31:24 33:15 51:4 74:20
75:13, 18 80:17 85:19
87:2 104:12 109:17
110:19, 25 112:1 115:9,
15 117:17 125:6, 18
149:19 161:15 171:12
195:3 202:20 212:2, 24
216:24 219:8 220:15
222:4, 7, 18 225:25
230:6, 23 233:18, 20
participate 103:1, 6
115:16, 19 218:1 220:19,
24
participated 74:15
218:4 219:18, 22 220:2
participating 115:17
particular 11:7 13:4
16:21 18:22 28:9, 20
29:9 52:19 58:6 142:1
189:19 203:2
particularity 128:19
particularly 48:9 58:9
parties 6:8 11:9 24:5,
10 64:5 66:14 98:8, 12,
14, 15 113:23 159:5, 8,
17 161:19 165:21
178:25 208:21 240:18
partner 165:22, 25
169:8, 12, 24 173:5
174:9, 13 175:14 176:25
177:9 181:21
partners 47:21 169:12,
14, 15
parts 217:4
party 69:19 70:23
195:6 232:15, 21
passage 178:6
passing 162:9
password-protected
139:15
Pat 17:23 28:14
Patel 200:6, 9
path 175:21
PATTON 2:10 6:12
Paul 43:22 166:6, 10
176:13, 16, 17 177:7
payable 13:18
Pearch 57:19
Pelling 17:23
Peninsula 157:10, 12
people 15:8 16:24 22:5,
9, 22 30:17 45:21 57:15,
16 58:3, 8 91:12, 18
103:8 138:10, 22 143:4
146:15 150:2, 19, 21, 24,

25 151:10 152:4 167:22
199:23 201:4 228:12
perceive 168:21 169:4
percent 21:7 49:25
50:8, 20 51:15 235:13,
16
perception 150:19
Perfect 238:12
perform 25:3, 4 57:7
163:23
performance 224:25
performed 66:11 178:10
performing 227:5 230:20
period 28:3 119:2
141:5, 9
permissions 183:7
permit 60:1 64:5
230:25
permitted 63:25 93:5
124:14 182:23
perpetual 170:10
Persinger 137:24 140:1,
2, 19 141:24 142:12
person 13:4 28:8, 12
43:18 49:22 196:18
199:12 223:24 224:21
personally 21:25 22:25
60:8, 18 136:25 148:4
160:21 185:13 199:20,
22 218:1, 23 223:1
225:24 229:18
personally-owned 142:11
143:18, 25
Persons 133:13 137:9
perspective 34:2 39:10
49:8 51:3, 10 61:22
90:3 108:14 112:11, 25
165:20 229:11
pertain 128:5
ph 12:20 13:6, 19 14:1,
18 17:23 25:22 26:22
33:18 42:8 43:22, 23
46:5 57:19, 20 61:3, 5, 6,
14, 15 111:22, 23 137:24
142:2 161:12 170:2
180:25 186:12 196:5
197:24 200:5, 17 224:22
Philip 52:21
phone 7:7 8:21 68:16
69:1, 4 96:16 105:5, 7
112:5, 8 115:13, 16, 17,
19 133:21 137:13 139:2
219:11, 12
phrase 17:25 42:3
201:18
phrased 99:19 155:19
physical 181:1
pie 163:5
piece 130:10, 23 131:14,
16 145:10

pieces 130:4, 16
pipeline 205:13
pipelines 208:12, 15
place 66:14 88:14
93:10 101:6, 23 195:23
206:7 209:21, 22
PLAINTIFF 1:7 2:3
Plaintiff's 15:11 19:9
38:16 40:13 45:9 47:6
48:21 52:3 58:16 64:15
68:7 73:6 76:1 92:3
94:1 95:10 97:2 98:23
100:2 102:5 103:11
105:11 109:21 110:10
111:17 118:3 119:5, 17,
22 120:12 129:1 148:5
152:16 161:7 166:1
177:12 181:24 186:3
189:22 194:17 198:4
199:25 232:7 234:18
plan 97:19, 22, 23 98:3
172:9, 20 184:21 210:16
planned 40:7 114:16
planning 171:14 176:25
plans 171:20 176:13
plant 17:25 18:6, 9, 16,
25 19:6, 16, 22, 25 46:14
201:4, 6
platform 151:12 170:18
201:11 217:1, 5
play 107:16, 19
players 71:22
plea 240:15
please 6:8 7:15, 24
56:11 123:8 133:8
177:24 238:17
point 18:17, 20 19:5
22:2 31:5 40:6 50:13
55:18 58:10 59:6, 7
62:15 63:10 66:21
67:24 94:23 101:14
109:11 119:11 127:4
128:17 129:21 142:22
149:16 155:20 157:14,
24 159:11 165:2, 9
166:24 170:15, 17
176:24 177:10 178:13,
16 217:22 229:24
points 130:24 158:12
225:19, 25
policies 138:25 139:8
143:8, 19 144:4, 7
146:16 159:15 162:14
policy 178:25
politics 105:25 106:3
107:23 108:1
pool 172:19
portal 139:15
portion 121:3
posed 39:23 156:23

position 90:15, 18, 25
112:25 113:2, 8 132:20
150:13 159:12 166:16
167:21 210:16, 19
223:25 231:7
positioned 81:16
positive 106:4
possibility 100:13
possible 43:8 44:14
113:15, 19 133:21 153:6
173:25 237:4
posted 38:11 137:21
138:18, 22 140:12
posting 137:18, 24
139:14, 25 170:10
potential 40:7 43:3
47:4 63:25 71:22 72:5
149:20 155:23 156:6
161:6, 24 167:11 168:10
172:13, 20 174:4 192:23
193:4, 5 204:13 225:20
226:18 229:21, 22
potentially 39:20 42:17
53:12 57:6 90:10 98:8
103:21 104:20 115:8
149:20 155:16 163:12,
14 165:18 174:25 177:9
209:12
Power 42:12 51:19, 25
52:1, 16, 17 54:4, 14, 19
55:3, 7, 15 60:6, 9, 12, 13
61:2, 17 62:4, 12 63:11,
12 157:10 163:19
215:16 218:22
POWERPLAN 1:8 6:4,
13 9:16, 17, 20, 22 10:3,
6, 8, 14, 17 12:22 13:2, 8,
15, 21, 24 14:3, 6, 9, 20
15:1, 8 16:6, 17, 24
17:10, 22, 24 18:1, 5, 17
20:2, 19 21:1, 4, 6, 15
22:2, 19 23:22 24:2, 11,
21, 24 25:7, 9, 11, 25
26:2, 4, 25 27:6, 12 28:2
30:4, 6, 13, 19 31:6 32:6,
10, 16 33:3, 20 35:3, 11,
12, 15, 23, 24 36:15 37:8,
18, 23 38:4 39:8, 18, 20,
21 43:2, 5 44:4, 18
45:24 46:6, 8, 23, 25
47:24 48:16 50:14, 19
51:15, 18 52:15, 18 55:3,
4, 21 57:10, 25 58:11
59:3, 7, 25 60:13, 14, 22,
23, 24 61:4, 10, 22 63:15
64:5, 19 66:1, 21, 23
67:16 70:4, 19 74:8, 10,
13, 16, 18 75:13, 23, 24
78:12 79:15 81:6 82:4
84:18 89:3, 7 90:1, 14,
18 91:8, 20, 21, 25 93:5,

6 94:16 95:22 96:2, 19,
22 97:11 98:11, 19 99:5,
13, 20 100:8, 13, 17, 21
101:14, 16 104:19
105:17, 20 109:17
112:25 113:2, 8 114:15,
25 115:22 116:2, 3, 6, 9
117:9 118:18 119:2, 14
121:18 123:11, 14
126:20 127:5 128:14, 18,
23 129:21 130:8 131:16,
22 132:19 134:23 135:8,
19, 24 136:5, 18 137:13
138:25 139:2 140:13, 22
142:16 143:7, 19 144:3,
11 145:4, 9 146:25
147:8 148:1 149:4, 13
150:25 151:21 152:22
153:24 154:1 155:5, 21,
23 156:1, 2, 5, 22 157:15,
20, 25 158:10, 14, 19
159:4, 12 160:22 161:4,
13, 14, 19 162:19, 23
163:15, 18, 22 164:1, 3
165:18 166:10, 11
167:23 168:1, 4, 5, 14, 21
169:23 170:18 171:24
173:11, 21 174:5 175:6,
11 176:24 177:8, 25
178:5, 18 181:6, 10
182:17, 19, 20, 21, 23
183:1, 5, 9, 10, 22 184:4,
11, 12, 18 185:10, 12, 17,
24 186:1 189:2, 6, 11
191:3, 25 193:19, 25
195:5, 13, 22 196:2, 12,
15, 24 197:5, 15, 23
199:1, 12 200:10, 19
202:11, 15, 18 203:2
204:4 205:4, 5, 24 206:3,
4, 7, 15, 16, 21, 22 209:17
210:11, 15, 17, 25 211:14,
20 212:10, 16, 25 213:15,
19, 21 214:8, 22, 23
215:4, 11 216:21 217:4,
11, 16 218:4 219:2, 6, 17
220:11 221:5, 6, 11, 12
223:14, 22 224:2, 8, 10
225:21 227:2, 9, 24
228:2, 4, 5, 23 229:4, 23,
25 230:5, 24 232:2, 16
233:4, 9 234:1, 21
235:11, 16, 24 236:12
237:1, 22, 23 240:11
PowerPlan-managed
112:20
PowerPlan-owned
112:18 141:4 142:10
143:9, 17
POWERPLAN'S 4:7
17:13 30:23 31:13, 19

35:20 37:4 40:7 55:11
57:25 60:2 64:1 65:1,
19, 20 66:7, 18 71:25
76:15 77:3, 10 78:10
79:7 84:13 87:14 89:4,
10, 11, 18 90:19, 25 91:1,
2, 13, 25 92:7, 20, 22
111:7, 13 114:11 118:8
119:3, 10 126:8, 9, 21
127:24 128:10 130:10,
17, 23 137:13 140:3
141:16 149:12 153:23
154:20 165:3 170:11
178:19 190:21 199:3, 19
201:19 203:23 209:7
211:25 213:7 216:24
217:23 219:9 220:12
221:4 228:21 229:12, 13
230:4, 8 231:7
PowerTax 18:14, 17, 21,
25 19:5 28:2, 17, 20
29:9 33:23 43:14 48:10
145:12, 15, 22 146:1, 2
171:2, 7 188:14, 18
199:8 203:19, 23 204:2,
5, 9, 13, 16, 21 205:2, 18
206:10, 12 207:6, 12, 19
208:2, 17 209:7 211:20
212:5, 8 213:15, 25
214:3, 6 215:21, 23
PowerTax's 209:10
PPL 163:25 164:2, 4, 19,
23, 24 165:2, 6, 12, 15
166:14, 15, 16, 24 167:7,
21 168:6 169:1, 20
170:2 173:16 176:14, 21,
23 177:8, 11, 24 178:4, 9,
12, 13, 16, 19 179:2, 12,
16, 20, 24, 25 180:1, 24
181:8, 13 182:9, 10, 25
184:1 227:3, 6, 14, 19, 25
PPTX 179:13
practice 224:22, 23
pre-dated 59:2
predecessor 150:13
pre-existing 189:12
premature 136:9, 12
premise 112:12
prepare 15:20 104:24
prepared 104:23
preparing 108:20 133:11
PRESENT 2:16 6:8
218:10
presented 122:20
133:18 162:21 191:16,
20 192:13 193:7 199:21
President 10:25 11:1, 21
175:17 236:5
pretty 194:4
prevent 35:12
previous 109:12

previously 26:12 90:8
99:21 107:21 117:12
132:4 165:13 184:1
186:8 206:3 211:13
213:7 216:15
price 18:17, 20 19:5
52:22 212:11
priced 18:25 19:3, 5
49:8 50:23 51:10
pricing 16:22 19:19, 20
primarily 17:23 109:2
167:5 168:3
primary 28:12 229:15
PRINT 4:5
printout 92:6
prior 12:12 27:23
31:12 35:14 37:7, 15
48:4 50:13 68:6 72:4
100:12 129:19 139:25
146:5 163:14 189:3
216:14 221:3
private 141:5 142:24
143:1 145:5
PRIVILEGE 4:19 118:7,
22
privileged 82:24
privileges 183:8
Probably 7:9 93:13
150:20 155:10 202:7
207:23 225:16 238:9
problem 44:23 45:3
89:20 114:4, 7 196:23
problematic 84:21, 23
problems 149:20
procedure 160:7 178:25
procedures 159:15
162:14
process 7:11 13:18
15:23 17:14, 21 23:12
25:12, 16 27:21 50:10
51:22 68:5 72:25 74:15,
18, 20 75:13, 19 79:23
85:19 94:13, 17, 20
105:2 124:7, 15 125:7, 9,
18 144:8 160:12 221:15,
19 226:1, 4, 10 233:18,
21
processes 88:4 90:2
produce 23:23
produced 24:1 37:2, 6,
16 222:18
producing 36:12
product 10:19 17:4, 6, 8
18:5, 6, 9, 11, 23 19:5
28:9 29:16, 17 40:8
42:1, 4 43:14 44:16
47:20 67:13 80:16, 17,
23 81:19 129:7 173:13
184:6 199:18 200:21
201:10 203:18 204:14,

16, 21 216:23 217:7, 16, 17 229:4, 14
production 16:17 136:22
products 18:7, 15 19:2, 6, 8 20:10 40:9 59:19 62:22 67:21 80:15, 18, 21 173:12, 13 199:1, 19 202:17 203:8, 9, 11 204:16 216:20 218:20 229:17
professional 9:11 12:5, 10, 13, 14, 16 66:5 158:1, 21 159:4 163:15 223:21 228:4 235:12 236:8
profile 112:14
program 101:15, 16, 19, 21, 24 102:16 108:7, 9 109:17, 20 110:7 111:6, 14, 25 113:14 114:15, 19, 25 115:9 117:9, 18 146:24 147:14 148:3 165:19, 23 169:8, 12 173:6 174:9, 14 175:14 177:1, 9 181:21
programs 24:2 93:1 165:25
prohibit 156:2
prohibited 239:17
project 10:1 18:7, 14 19:8, 24 30:9 32:19, 20, 21 36:12, 14, 20, 22 52:19 56:22, 24 57:2, 4 95:4, 5 96:19 178:18 182:24 186:25 188:22 212:3 220:21 228:1, 3, 5, 7, 8, 11, 15
project-related 183:13
projects 10:2 25:7 30:18 32:18 35:7 193:18 212:24
promote 174:1
promoting 39:12
Proof 181:1
property 20:20, 25 29:13, 14, 20, 22 30:2, 6, 8, 10, 24 31:6, 13, 16, 25 32:4, 15 34:3 35:20, 25 36:17 37:11 53:19, 21 55:9, 13 57:13 58:1 59:18, 20 60:5 61:19, 24 62:2, 3, 10, 17, 21 63:4, 15 65:2 69:25 80:15 84:14 89:18 90:3 91:1 95:25 106:11 115:24 117:18 130:5, 10, 17, 23 131:17 132:5, 6, 16, 21 144:14 195:5, 14, 23 206:17 213:22 214:13 215:12 217:24 218:24 219:10 220:13, 22 221:7

225:21 229:16 232:18 233:1
proposal 55:1 98:22 104:23, 25 162:18
proposed 99:7 185:16
proprietary 21:19 22:13 76:16 77:12 78:10 89:11 90:15 121:20 123:12 140:9 206:23 210:11 213:23
prospective 208:20
protect 20:15 21:5 22:10, 18 23:6
protected 21:11 22:24 34:11 123:13 127:24 128:10
protecting 53:25 58:1 144:13 217:23 219:9
PROTECTION 4:13 20:16 67:11 101:15, 16, 19 102:12, 14, 16 104:12 108:7, 9 109:8, 17 110:6, 19, 25 111:6, 14, 25 112:5, 8, 11 114:15 115:9, 13, 15 117:9, 18 146:24 147:14 148:3 156:1 210:16
protocol 159:16 160:7
protocols 159:8
prototype 145:8
provide 11:22 24:21, 25 25:1 38:1 66:19 75:24 99:5, 22, 24 106:10 113:23 140:16 150:3 153:16 170:23 171:1 178:5 182:9, 18 192:11 211:23 229:19 230:1 239:15
provided 25:15 62:5 75:19 80:25 91:16 98:22 118:7 127:7 134:23 135:3, 8, 12, 14 153:17 183:2, 6, 7 185:4, 6, 18, 20, 21, 22 211:2 222:3
provider 168:11, 13, 22 169:5 170:22
providers 48:13, 15 204:15
providing 55:8, 19 57:7 66:23 67:11 99:21 179:17 181:6 214:3 227:25 236:12
provision 66:8 211:17 230:4
provisions 66:14
PUBLIC 2:11 126:16 128:4 141:7, 11, 12, 16, 23 142:10, 24 143:17, 25

publicly 40:1 100:18 131:24 132:11, 20, 22 142:19 143:4 146:11
publish 91:7
pull 216:9 223:11
purchase 17:13 154:12, 20
purchased 154:8
purchases 154:7 157:3
purported 31:13 75:4 77:1, 10
purportedly 77:25
purposefully 158:20 159:3
purposes 111:14 202:25
pursuant 1:12 15:17 38:3 74:18 211:24 227:6 239:7
pursue 163:1 176:25 177:8
push 99:13, 19
put 37:13 46:20, 23 63:1 104:20 105:20, 22 129:6 155:3 183:20 215:11 229:5
putting 25:10 187:3
PWC 204:16, 20 205:2, 23 206:1, 4, 7, 9, 16, 22, 25 207:3 208:1 211:14, 19, 24 212:4, 18 213:6, 14, 25 214:6, 9 215:20
PWC's 206:16, 22

< Q >
QA 186:11
qualifiers 207:7
qualify 210:7
quality 150:3
query 216:23
question 7:15, 17 11:7 22:16 29:2 34:21 35:21 37:21 39:17 68:22 75:22 77:6, 16, 19, 21 80:3, 4, 5 82:22 83:12, 13 84:25 85:2, 12 86:12 87:16 96:25 113:6, 12 122:13 123:8, 18 124:11 125:2, 16, 21 128:7, 22 129:11 130:12 131:6 135:5 143:21 144:3 154:15, 18 155:19 157:1 160:25 180:14 184:8, 10 186:9 190:5, 15, 20 191:15 192:4, 7, 11, 16 193:2, 9 206:19 212:14 213:12 214:8 215:2 217:10 226:7, 14, 20 228:21 230:22
questions 16:12 40:21 56:18 75:10 81:11 85:7 128:21 187:23 216:9

217:19 223:13 225:18, 22 229:9 230:12 231:2 234:15
quick 7:11 180:2, 9 190:20 211:3
quickly 167:22 169:11
Quintana 61:5 219:24
quote 168:14
quotes 49:25
quote-unquote 217:12

< R >
raise 6:14
raised 227:9, 12
ramifications 167:11
range 223:23
rate-regulated 205:12, 13 207:5, 8, 11 208:14, 15, 18
rates 82:3 130:9, 22, 25 131:1, 4, 10 149:7, 12
RCC 5:7 24:13, 15, 17, 24 25:6, 9 34:24 35:9, 12, 15 65:19 66:4, 7, 17, 23 78:23 79:6 80:6 89:6 99:14, 20, 24 148:16 149:1, 4, 21 151:15, 22 152:6, 11 153:17 155:8 159:12, 20 160:14, 23 161:5, 25 162:9, 16, 19, 23 163:4, 5, 12, 18, 20, 23, 25 164:1, 19, 23 165:7, 12, 15 166:14, 24 167:7 169:4, 13 170:4, 13, 23 172:19, 23, 24, 25 173:14, 20 174:4 175:5, 10, 16, 17 176:8 177:9 178:1, 5, 13, 18 179:17 180:20, 23, 24 181:9 182:5, 8, 12, 24 183:13, 19, 25 184:5 188:2, 3, 6, 10 191:17, 21, 25 192:13, 25 193:7, 22 227:2, 5, 9, 12 228:2, 5 235:3, 8, 18, 20, 23 236:8
RCC's 66:22 178:22
reach 105:5 109:18 168:7
reached 55:3 59:7
reaching 115:9
read 16:9, 13 40:20 41:6, 7 45:2, 5, 14 47:11 51:7 52:8 68:12 70:24 71:7, 21 76:20 88:8, 10 92:11 97:8 102:20 110:2 112:6, 7 121:15 122:4, 25 123:1 126:3, 5 127:17 133:3 134:24 135:5 137:15 139:2 141:3, 7 142:12, 14 144:19 148:17 149:9, 10

150:3, 21, 22 151:13, 14
 153:6, 12 154:8 162:11,
 12 163:5 167:12, 13, 24
 168:14, 16, 22, 24 169:16
 170:6, 8, 19, 20 171:21
 172:4, 17, 21 173:3, 18,
 19 174:2, 3, 18 175:1, 6,
 7, 22 176:14 177:17
 178:1, 2 179:14 181:2
 186:12, 21, 22 188:4, 16
 190:22 191:11, 18 192:5
 194:22 195:3 198:9, 21
 199:13, 14 201:15, 16
 202:2 224:24 232:18, 20
 235:14, 15
reading 1:13 69:6
 133:8 202:11
ready 44:1 133:9
real 7:10 42:25
realize 145:5
really 30:25 190:15
 201:13
real-time 202:1
reason 8:6 18:8 27:7
 28:21, 25 29:3 33:24
 34:17 48:7 52:20 53:10
 71:4 75:6 86:20 92:19
 109:4 112:10, 16 156:5
 160:13, 15 184:3 232:17,
 25 233:7 236:7
reasonable 20:6, 15
 134:11
reasons 91:6 147:17
 160:16, 17
recall 21:2, 4, 24 22:17
 24:12 30:4, 16 31:9, 12,
 16 36:1, 3, 19, 23 38:14
 40:12 46:20 48:19
 50:13, 18 51:21, 24
 54:25 58:1, 5, 7 59:4, 15
 60:25 61:3, 5, 11, 16
 62:19, 23 63:10, 23 64:2,
 7, 9, 11 72:24 73:1, 3
 75:17, 18, 23 95:3 96:5,
 8, 24, 25 98:21 99:15, 18
 100:7 101:17 102:3
 103:15 104:14 108:25
 109:14, 19 110:17 111:9,
 10, 12, 16 115:1, 10, 17,
 21, 22, 25 116:17, 20
 117:10, 23 118:17, 25
 119:9, 10, 13, 15 120:8,
 10 125:23 138:19
 141:13 148:13, 25 149:2,
 3, 5 150:12 151:2, 23
 152:14 153:10 155:6
 157:6, 17 158:2, 11, 18
 164:20 165:8 166:21, 25
 167:6 168:6 169:3, 6, 21
 176:23 180:21 189:7, 20
 190:8 194:2 195:10, 11,

15, 19, 25 196:22 197:16,
 25 200:16 203:11, 17
 207:9 208:7, 13 210:3, 5,
 21, 22 216:16 217:12, 24
 218:11, 12, 13 219:14, 25
 220:2, 4, 10 221:15
 223:15 224:11, 14 232:4,
 6, 12 233:14 234:16, 22
 236:12 237:20
re-cases 203:1
receive 27:14 76:6, 11
 91:10
received 9:8 34:8 41:3
 45:13, 14 47:5, 12 68:13
 75:13 78:4 81:14 85:1
 94:7 97:9 125:8 137:1
 140:2, 5 179:24, 25
 190:20 198:9
receiving 141:24
recollection 27:9 48:2
 53:18 60:15 63:12, 18
 67:7 81:15 99:4, 17
 101:23 105:16 108:11
 110:5 112:1 161:23
 168:25 169:18 176:7
 192:14 216:15 217:16
recommendation 169:11
 173:4 174:9 175:13
recommendations 169:7
recommended 114:23, 24
 175:18 193:12
recommending 193:11
record 7:3 56:7, 9, 11
 93:17 116:24, 25 117:4
 124:19, 21 164:10, 12, 14
 194:6, 8, 15 211:7 216:1,
 3, 5, 13 217:21 229:11
 231:12, 17, 20 238:3, 5,
 20 240:14
records 27:4
RECROSS-
EXAMINATION 3:7
recurring 171:20
redlines 185:21
redo 188:15
reduces 112:10
Reed 97:13, 16
refer 44:3 69:15 84:2
 144:16 171:16 201:4
reference 95:8 119:13,
 15 152:7 190:22 194:21
referenced 27:18 82:14
 102:1, 3 166:20 167:15
 192:21
references 42:10 95:7
 102:11 105:19 155:8
referencing 102:15
referred 55:22 82:11
 103:20 137:25 142:3
 146:12 167:16 180:10,
 11 217:11, 13, 14 221:14

referring 49:11 58:21
 70:3 71:1 80:16 87:4
 107:23 108:2 117:25
 132:9 134:17 135:7
 149:1 150:6, 23, 24, 25
 157:2 162:6 167:17
 172:5 176:8 180:9
 189:19 190:4 192:4
 195:1, 25 198:17, 24
 201:3 202:23 205:25
 217:16 232:22
refers 18:6 64:25 72:9
 73:23 133:16 151:18
 173:11
refineries 208:12
reflect 83:9
reflected 83:23, 24
 142:12
refrain 74:8
refresh 99:4 105:16
 110:5 168:25 169:18
 176:7
refuse 157:24
refused 26:3 32:24
refusing 33:10
regard 86:18
regarding 164:19
 178:12 190:20 195:4, 5,
 9, 22 206:22
registered 139:23
registrations 139:16
Regulated 24:16 171:10
regulations 239:7
regulatory 201:24 202:1,
 3, 6, 21, 22, 23, 24, 25
 203:4, 9, 12
relate 15:3 148:10
related 13:12 15:4
 27:11 46:16 49:1 85:21
 139:1 143:8 148:13
 149:4 189:11 190:10
 193:19 195:13 200:15
 206:16 227:1, 2
relates 112:15 183:12
 228:10
relationship 19:20 44:19
 51:3, 5, 14 55:15 106:5,
 22 109:12 192:22
 199:22
relationships 175:11
relative 19:20 240:16
relatively 149:15, 18
 224:5
relaying 179:23
release 33:9 47:19
 186:19, 24 187:2 188:19
 225:15, 16
released 33:3, 13
releases 187:1 225:17
relocated 142:9, 19, 23

143:24
relocating 143:16
remains 45:21
remediation 25:7 153:20
remember 8:3 14:17
 21:16 23:13 36:10, 20
 61:5, 6, 13, 14 62:13
 73:5 81:2 101:18
 149:17, 23 151:5, 8
 167:9 176:10 177:3
 197:21 203:13 225:21
 231:1
remind 7:11
reminding 101:21
repeat 35:21 37:21
 75:22 77:4, 6 80:4
 86:12 87:16 113:6
 122:13 123:8 130:12
 131:6 143:21 154:18
 160:25 164:25 184:8
 206:19 212:14 213:11
 230:6 234:5
rephrase 83:12 190:5
replace 96:23 206:10
replaced 199:1, 3
 202:11 204:16
replacement 57:10
 199:12, 19 204:9, 13
replacing 104:20 215:21
report 13:17 22:5, 9, 22
 197:5, 7, 10 221:12
reported 57:15 150:10
 158:19 159:2 178:22
 197:7 221:13 224:18
Reporter 1:15 6:14, 17
 7:12 239:11, 22 240:6,
 25
Reporting 22:6 92:15
 145:16 197:19 217:7, 9
 239:8, 15
reports 22:18, 23 23:5
 92:16, 17, 18, 25 196:9
 216:23 217:8
repositories 126:17
 144:21
repository 144:11
represent 6:9 92:6
 118:6 240:14
represented 232:3
representing 6:10, 11
 171:20
reprimands 146:17
request 6:7 70:1, 4
 82:24 83:3 95:13
 106:15, 23 107:6 128:20
 130:5, 6
requested 15:18 16:21
 32:21 96:25 105:17, 19
requesting 101:5 105:23
requests 16:16 161:24

required 22:10, 22, 24
 23:6 33:6 38:8 86:18,
 20, 21
requirement 38:1
requirements 10:5
 18:13 24:8, 9 27:10
 88:6, 19, 22 89:10, 17, 21,
 25 90:6, 8
requires 162:10 228:19
reserved 1:14
resided 112:24
resolved 224:20 225:1, 2,
 3
resource 171:14
resources 44:15 66:15
 99:6 208:5 235:13, 17
resourcing 108:14
respect 95:19, 22 101:15
 123:25 137:9 152:6
 163:24 166:24 169:4
 192:25 209:22 212:11,
 17 214:17 219:5 220:23
 222:20 224:19 225:3, 24
 227:21, 23
respective 137:14, 17
RESPONSE 4:21 37:2
 48:16 62:12, 23, 24
 104:21 105:18, 23
 120:17 122:23, 25 123:4,
 10, 19 124:5, 9 125:3, 5,
 10, 17 126:2, 3, 7, 14
 132:21 133:4, 9, 11, 12,
 16 134:24 135:6 136:4
 137:2, 5, 9 138:14
 140:19 143:10 146:12
 152:23 192:8, 9 210:2
 223:2
responses 7:21 119:10
 123:3, 21 127:4 133:1
 140:6 222:22, 25 223:3
responsibilities 10:16
 201:11 221:22 228:14
responsibility 11:14
 12:7 28:12 200:23, 25
responsible 10:18 11:10,
 13 188:21
responsive 16:20
rest 131:13 148:11
restate 193:2
restriction 74:13 183:15
restrictions 182:15
result 55:14 95:23
 96:15 106:24 107:6, 10
 114:10 146:10, 19, 21
 179:2
resulted 82:18 181:9
results 109:1
Resuming 15:12 16:4
 18:24 19:10 20:13
 26:16 28:10 29:1, 7, 18
 31:11 33:17 34:6, 16, 23

37:22 38:17 40:3, 14
 42:6, 23 43:9 45:10
 46:19 47:7 48:8, 22
 49:16 52:4 53:15 54:8,
 15, 22 56:10 58:17
 59:12 63:20 64:16 65:7,
 25 66:6, 16 67:3, 15, 22
 68:8, 23 69:7 70:9, 15
 71:15 72:8 73:8 76:2
 77:7, 22 78:8, 22 79:5,
 13, 21 80:2, 12 81:18
 82:25 83:14 84:3, 15
 85:6 86:2, 13 88:23
 89:5, 15 90:4, 13, 24
 91:11, 19 92:4, 24 93:18
 94:2 95:11 96:21 97:3
 98:1, 24 100:3, 25
 101:13, 25 102:6 103:12
 105:1, 12 106:12 107:4,
 11 108:6 109:3, 10, 16,
 22 110:11, 23 111:4, 11,
 18 113:7 114:8, 20
 117:3 118:4 119:6, 18,
 23 120:14, 21 121:10
 122:15 123:9 124:22
 125:15, 25 127:2 128:6
 129:2 130:14 131:8, 21
 132:2, 10, 18 135:16, 23
 136:3, 13, 24 139:24
 143:22 145:20 146:3
 148:6 149:25 151:4, 19
 152:17 156:14, 21
 159:18, 25 161:2, 8
 162:2 164:13 166:2
 177:13 181:19, 25 184:9
 186:4 189:23 193:3, 14
 194:12, 18 198:5 200:1
 206:20 211:9 212:15, 23
 213:5, 13, 20 214:14, 20
 226:8, 15, 22 232:8
 233:16 234:6, 14, 19
 235:22 236:19 237:5, 11
retained 147:17
retrieve 78:11 79:9
revealing 77:17 78:3
 81:12
revenue 171:20 173:18
review 23:12, 13, 14, 16
 133:12 145:24 185:3
 188:3
reviewed 16:11 41:2
 104:14 125:9
reviewing 119:10 133:19
revise 131:23
revised 185:25
revisions 185:16
RFP 46:20, 22, 23 47:1,
 4, 5, 18 48:2, 10, 14, 16
 49:19 51:16, 24, 25 52:2,
 11 152:23
RFPs 48:5 52:1

right 6:15 23:20 31:17
 34:18 56:3 88:11 93:19,
 23 94:3 101:12 116:24
 117:4 120:25 121:1
 122:14 129:11 131:15
 156:10 164:9 189:6
 190:12 196:22 200:6, 25
 225:9 231:9, 17
right-hand 177:21
risk 53:25 59:20 60:16
 67:20 80:14 109:8
 112:10, 13, 14 154:8, 12,
 14, 20, 22 155:14, 16
 156:22, 23 157:2 160:21
 161:3, 6 174:4 236:15,
 25 237:3, 4, 14
risks 236:11
Rob 33:18, 19 34:1, 3, 9,
 13 115:2 150:6, 11
 232:10 233:4
Robbins 1:16 2:4 6:6, 7
 74:22
Roger 52:21
role 9:22 10:11, 14, 20,
 22 11:5, 11, 16, 20 12:13,
 14 17:9 28:7 46:8
 111:25 115:5 182:4
 200:20 226:16, 17 229:6
roles 10:16
Roper 194:24 195:22
 206:5, 6
rough 238:14, 15
roughly 176:3
Routon 14:18 70:11
 103:3
RP 157:4, 6
rules 7:10 88:8 239:7
Rumor 43:25
runs 57:17, 18, 19, 20
rush 238:13, 14
Ruth 153:5, 9

 < S >
S/4HANA 201:23 202:8
sabotage 236:16, 22
 237:6, 10
SAE 95:7
Sage 204:14 207:10, 12,
 16
sales 10:20 154:13, 23,
 24 169:15 173:9, 10
 236:1
Sam 57:20, 22
SAP 171:5, 7, 15, 17
 174:18 199:21 204:1
 205:19, 20 218:18
SAP-based 171:4
SAP's 202:9
Sarah 103:4 196:6, 19
sat 75:1
satisfied 225:6

saw 37:14 93:11 103:15
 105:18 112:3 115:12
 188:13 191:1
saying 89:9 93:4 104:8
 107:1 158:16 172:23
 173:20 175:10 187:9
 220:11 229:21 236:21
says 19:21 27:5 34:18
 39:3, 4, 13 41:17 42:13,
 24 43:10, 25 44:6 47:18
 49:5 50:6, 22 51:7
 69:19, 25 70:22 71:3
 72:16 81:5, 25 88:2
 94:16, 22 97:18, 22 98:3,
 7 102:18 105:24 107:17
 108:16 112:3 118:14
 130:21 133:21 135:22
 136:11 137:12 138:24
 140:22 141:4 142:7
 143:7 148:15 150:1, 18
 151:9 153:5, 11 154:6
 155:10 162:3, 9 163:4
 166:13 167:10, 20
 168:10, 20 169:8 170:1,
 16 171:13, 18 172:4, 18
 173:8, 14, 24 174:7, 15,
 16, 24 175:5, 16, 17
 176:13 177:24 179:11,
 20 180:1, 6, 13, 24
 182:17 186:11, 18, 23
 187:13, 15, 19, 21, 22
 188:1, 2, 6, 13, 17 189:16
 190:19 191:8 195:3
 198:18 199:11 200:22
 201:13, 17, 22 202:3, 10,
 21 232:14, 25 235:8
scenario 57:11 105:25
 106:3, 6 107:23 108:1
Scheckler 180:25
scheduled 22:20 166:15
schema 62:6 65:10, 14,
 17
school 8:23, 25
scope 19:8 96:22 97:19
 163:13, 17 220:21
scrap 120:19
scratch 88:6
screaming 235:9
screens 215:18
scripts 32:23 33:4, 7, 10
search 126:11, 13
searched 126:7
second 49:24 65:5 69:9,
 15, 18 73:18 81:24
 87:24 88:2 92:10, 12
 110:8, 16 120:8, 10
 126:25 127:4 132:25
 134:13 137:8 155:11
 184:22 189:16 195:3
 201:13 223:3 229:9

231:15 232:13, 14
secrecy 121:19
secret 20:14 22:24
 28:20 29:10, 15 31:21
 33:23, 24 34:2, 10 37:12
 84:4 100:17 126:20, 24
 132:13
secrets 21:6 22:10, 13,
 18 23:6 31:20 37:1, 4, 9,
 11, 15 60:14, 24 76:16
 77:3, 11 118:14, 19, 24
 119:3 121:20 123:12
 128:18 134:23 135:3, 8,
 19 136:6 140:4 195:5,
 14, 23 206:17, 23 209:17
 210:10 213:22 232:3
 234:1, 9
section 76:15, 23 77:1, 8,
 13 78:9
secure 183:19, 21
security 23:18 139:17,
 21 140:16 159:8
see 7:14 38:25 39:5
 41:14, 18, 19 42:8, 14, 25
 43:23 44:1, 8 45:22
 47:16, 19, 22 49:9, 24
 52:23, 24 58:13, 24 65:8
 70:1 73:15, 19 75:16
 76:16 81:7 82:8 87:10
 94:13, 14, 17, 18 95:14
 97:13, 20 98:9 103:17
 106:1 110:16 116:12
 118:9, 10, 15, 21 121:4
 123:15, 17 126:8, 11, 13,
 17 129:19 133:22
 137:10 140:20 145:18,
 25 166:17, 18 169:9
 172:9 174:8 177:24
 179:21 182:13, 15
 183:15 185:3, 8, 11, 16,
 21 187:3 195:6 198:15
 213:6 216:17 223:18
 235:3, 6
seeing 46:12 75:17
 100:7 110:17 119:9
 216:15, 16 232:6, 12
seen 15:14 19:12, 14
 27:3, 4 37:7 38:19, 20
 40:19 45:12 47:9, 10
 48:24 52:6, 7 58:19, 22
 68:10, 11 73:12, 14 74:2
 76:4, 5 94:5, 6 95:7
 97:6, 7 99:2, 3 100:6
 102:9, 10 103:14 105:14,
 15 109:25 110:1, 13
 111:20, 21 117:13, 15
 119:8, 20 128:12 129:3,
 5, 8, 13, 15, 16 135:2, 7,
 12 136:21 148:8, 9
 152:19 161:10, 11 166:4,
 5 177:15 182:2, 3 186:7,

8 190:1, 2 198:7, 8
 199:20 200:3, 4 201:18
 210:13 221:9 222:8, 9,
 11, 17 232:2, 5, 11
 234:12
select 52:18
selected 52:22
sell 19:25 173:21
 174:25 236:16 237:8
selling 38:12 42:17, 20
 204:20 207:3
Seminole 112:4
send 64:19 91:9 161:20
sending 101:22
senior 111:23 196:18
 199:11
sense 20:20 28:11 44:8
 154:6 175:3
sensing 150:20
sent 16:16 19:13 34:24
 45:17, 18 58:11, 14, 25
 63:2 64:24 67:5 76:7,
 12, 21 94:8 96:7 97:15
 110:3 117:17 179:13
 190:17 198:13 214:16,
 22 215:3 223:17 234:24
sentence 39:4 42:24
 44:6 51:7 56:19 65:8
 71:3 87:3 92:11, 14
 94:15 98:7 137:8, 10
 138:1, 8, 23, 24 140:22
 141:3 142:3, 7 143:7
 144:15 148:14 149:6
 150:1, 7, 18 151:7, 17
 152:2 153:11 162:8
 166:20 167:10, 16, 20
 168:8, 10, 20 171:12, 18
 172:17, 18 173:14, 24
 174:16 175:5 176:13
 186:18 187:13, 19 188:2,
 13 189:16 191:8, 15
 192:7 194:22 195:3
 201:13, 22 202:20 203:5,
 21 232:14
sentences 173:20 201:12
separate 162:5 188:18
separated 163:17
September 161:21
 177:18, 22
series 181:8 230:22
seriously 43:2
seriousness 39:22
serve 71:7, 10
served 222:23
servers 112:24
service 151:22 154:12
 204:15 214:3
services 11:18 12:4, 5, 8,
 10, 13, 14, 16 24:21, 24
 48:3, 6 49:8, 25 50:14,
 19, 23 51:2, 4, 5, 10, 14,

19, 23, 25 55:19 57:18,
 20 66:5, 9, 19, 24 67:10,
 11 79:3, 20 99:21, 24
 111:23 113:24 146:25
 148:1 152:5, 12 153:16
 154:7, 20, 24 155:4
 156:23 157:3, 4, 5 158:1,
 21 159:4, 6, 9 160:5, 6
 163:16 165:13, 16
 168:13 170:4, 11, 13, 22,
 23 173:17 174:25 178:6,
 8, 10 182:8 184:17
 191:2 193:22, 24 209:10
 212:4 223:21 227:3, 6,
 14, 25 228:4 229:19
 230:1 232:16 235:12, 14,
 17, 24 236:8, 12 239:15
session 22:21
sessions 21:10 23:1
set 10:5 30:23 31:13
 42:14 47:19 52:2 77:2
 83:15 120:8, 10 121:25
 122:22 123:13 127:4
 132:25 146:2 210:16
 217:8 223:3 229:22
 236:25
sets 31:5 37:3
Setting 21:3 100:11
 124:1 128:9 185:24
 221:3 237:7
shake 7:21
shaking 153:5, 6
share 43:11 47:24
 97:19 108:3 176:14, 21
 188:10
shared 71:19 95:3, 4
 160:20 176:23 191:23
SHEET.....
241 3:10
shift 164:24 170:1, 5, 9
 171:19, 25 172:1, 24
Shoon 142:2, 5, 7, 15
 143:18, 23
short 124:16 192:2
 194:4
shortly 94:23 96:10, 11
short-term 189:17
show 87:13 99:11
 194:20 215:16
showed 15:22 215:18
showing 122:17 233:25
shown 84:22 86:4 134:6
shows 128:10
SI 24:6
sic 205:1
side 61:4, 12, 14 151:11
 219:2, 17, 23
sign 26:4, 9, 10 32:21,
 24 33:1, 10
signature 82:7 86:9
 87:9 119:25 120:22

signed 26:12, 17, 24
 27:5, 13 29:25 34:4
 57:5 97:20 155:1
 180:19, 23 189:3 205:23
 222:25 223:7
significant 156:19, 23
 191:9 201:14
significantly 104:12
signing 1:13
similar 10:13 20:6
 27:22 36:23 37:3 44:19
 56:25 59:19 84:17 87:3,
 13 129:20 140:5 153:16
 193:24 201:25 202:7
 208:1 212:21 233:8
similarities 215:10, 13
similarly 120:7
simply 128:22
simular 163:24
simultaneously 59:19
 61:19 227:25
single 135:18 136:15
 145:7
sir 120:24 216:11, 13
 217:19, 21 218:21
 221:14 222:20 225:18
 226:23 229:4, 8, 25
 230:22 232:4
sit 58:7 75:6 121:24
 122:7, 16 127:18, 22
 128:8 136:17, 25 152:1
 210:5, 8 221:2
site 112:17
situation 58:6 64:11
 67:8, 9 204:7 212:20
 224:7, 18, 20
six 22:11 187:16
Skip 141:3 153:11
Skipping 138:23
slide 21:24 24:4
slides 21:10, 14
slot 198:20
small 145:7, 10 187:10
 188:14
smaller 18:14 105:25
 107:17
Smith 138:17
software 10:3, 6 14:23
 28:17, 20 29:9 30:8
 33:23 38:12 39:9 42:17,
 20 45:7 48:3, 6, 7, 13, 15
 53:21 55:11 59:21 60:2
 61:20, 21 62:10 63:8, 15
 64:1, 6 66:23 67:23
 68:2, 4 70:5 71:23, 25
 74:9, 19 75:1, 4, 5 78:11,
 24 79:4 80:8 81:2, 19
 83:6 89:4, 7, 21 90:7, 18,
 22 91:2, 21 92:25 93:6
 111:7, 13 112:24 114:11
 128:1, 11 131:3, 9, 10, 11,

14 155:4, 24 156:6, 17
 157:15 165:4 170:10, 14,
 22 171:1, 3, 4, 5, 7
 173:15, 21 174:1, 5, 6, 22,
 25 175:10 178:13, 19
 184:16 187:4 192:3, 18
 199:2, 4, 6 202:23, 24, 25
 203:23 204:8, 20 205:17
 207:3, 17, 20 208:20, 22
 210:11, 25 212:8 215:5,
 9, 19, 24 218:18 221:18
 222:3, 8 229:22, 23, 24
 230:4, 15, 20, 21 231:1
 232:16 234:2, 10 236:16
 237:2, 8
software-to-produce
 92:18
sold 27:12
Sole 168:11, 22 169:5
solely 183:16
solemnly 6:17
solution 43:25 44:13
 45:7 173:17 181:14
 184:13, 19 189:17, 18, 20
 191:10 199:12 204:2, 5,
 8, 11, 12 205:6, 17 207:3
solutions 19:4 46:17
 160:22 161:4 174:1, 25
 207:18 214:13 222:4
somebody 138:11
 158:19 159:2 196:20
 221:5, 12
someone's 186:14
somewhat 149:20
Sorry 12:10 40:7 58:24
 64:18 65:3 68:18, 20
 71:12 76:9, 18 78:14, 16
 88:13 103:13 110:21
 154:18 163:19 194:10
 203:15 205:10 215:1, 2
 220:6 224:13 238:14
sort 20:24 21:4 24:3
 27:17 154:1 170:23
 187:3 188:23 192:24
 206:3 212:10, 17 228:17
 229:5
sorts 23:22 24:23 34:4
sounds 56:3
source 28:2 37:19, 24
 38:1, 2, 5 63:8 75:13, 17
 126:16 145:9 222:9
SOW 42:14, 22 97:20
 105:19, 23 189:2
SOWs 29:25
space 41:18 66:5
 156:10 173:8, 10, 11
 207:20
speak 218:14
speaking 24:17 125:12
 141:25 198:20 201:20
speaks 78:1 84:24

specific 29:23 30:4, 25
 31:5, 9, 12, 25 33:23
 34:8 36:6, 21 38:15
 40:12 52:2 54:25 55:1
 58:5, 7 59:4 62:3 64:11
 84:10 99:15 100:7
 104:1, 4, 17 108:15
 115:10 119:15 130:20
 135:14, 25 136:6, 17
 137:3 139:8, 16 140:3
 145:10 147:24 151:3, 5,
 8 152:7 157:1 158:2, 18
 162:17 163:22 164:20,
 21 169:21 171:3 172:5,
 12 176:10 177:3 178:8
 180:21 183:12 185:11
 189:20 193:20 200:15
 204:7 206:3 207:1
 208:7 209:19 210:13
 217:4, 20 219:14 226:3
specifically 21:23 31:18
 35:19, 24 36:16 39:11
 61:16 62:18 64:2 99:18
 102:1, 3 112:10 125:8
 139:1 144:18 152:6
 155:7 157:5 172:2, 8
 177:5 195:1
specifications 88:7
specifics 31:17 36:19
 48:19 51:21 96:14
 141:13 166:21, 25 167:9
 169:6 210:21 224:4
specify 48:10
specifying 135:13
speculate 7:24 98:18
 151:24 167:18
speculation 233:12
speed 149:20
spelling 39:4, 14
spoke 13:3 142:5, 6
 218:15
spoken 13:18
sponsored 198:19
spreadsheet 83:18 209:1
spreadsheets 83:15
SQUARE 2:11
squeeze 149:21
SQUIRE 2:10 6:12
stage 197:21
staged 187:7
stance 190:21
Stand 93:15 124:18
 157:9, 22 171:13
standard 21:20 30:1
 144:8, 12
standing 238:8
stands 157:11
stand-up 102:19, 22
 117:23
start 41:8 76:9 84:12
 153:1 166:6 174:5

190:16 205:17 215:1
 220:7
started 9:20 27:25
 40:25 73:3 88:25 89:20
 197:19 204:5 205:5
 207:12 214:6 228:9
starting 129:14 165:18
starts 133:3 134:13
STATE 1:4, 15 6:8 7:2
 130:9, 22 239:4 240:3, 7
stated 101:23 160:15
 180:13
statement 42:21 44:21
 90:11 104:20, 24 105:17
 107:15 124:3 136:11
 150:9, 14 174:7 179:20
 189:12 192:9 218:25
 219:3, 6 221:6
statements 88:7 223:7
 233:8
STATES 1:1 39:16
 78:20 107:3 110:8
 123:11 136:9 233:3
stating 170:15
stay 151:11
STEPHEN 2:10 3:6
stephen fazio@squirepb.c
om 2:13
steps 20:15 21:5 35:18
 39:22 68:2 133:17
 139:17 179:12, 16
 180:17, 18 214:9
Steve 6:12 15:22 93:11
 116:22
Stevens 198:17
Stickiness 174:15
sticky 175:6
stipulations 1:13
stock 27:11
stopped 62:16 204:5
 205:1, 5 207:11 214:5
store 130:25 131:1, 4, 10
stored 113:4 159:13
storing 130:8, 21
story 201:24 202:10
 235:9
straight 70:13
strategic 95:6, 8 200:10
strategy 10:21, 25 11:1,
 3, 21 20:2, 4, 7, 9, 12
 46:13, 14
Street 1:16 2:5
stress 120:9
strike 59:23 64:18 76:9
 108:7 111:24 127:19
 129:25 143:15 229:7
string 42:7 200:5, 11
strong 232:17, 25
structure 20:22 90:15
 131:12

structures 81:7 87:13
 211:21, 23 215:15, 17
 222:12 229:17
stuck 235:11
study 16:13
stuff 208:13
sub 74:5
subcontracting 162:9, 23
subcontractor 162:19
subheading 76:17
subject 102:11 118:23
submit 96:22
submitted 48:16
subsequent 193:11
subsequently 165:9
subsidiaries 187:5
subsidiary 188:7
substance 118:12
substantive 56:12 93:20,
 24 117:6 124:24 164:15
 194:14 211:11 231:24
substitute 207:19 208:2,
 17
success 10:21, 23 11:17
 49:7 51:9 57:19 198:21,
 25
successful 20:4 99:9
 199:18
sue 100:13
sued 100:8 114:25
Suez 55:19, 21 104:1, 9,
 13, 19, 21 105:5, 17
 107:22 147:5, 14, 16
 220:18, 23
suggested 64:4
suggesting 54:18, 21
 61:25 64:9 157:2 172:6
Suite 8:19 202:18 203:9
summary 77:2, 9 96:7
SUMMER 2:17 46:21
 100:9 117:9 158:25
 159:11
sunset 170:6
supervise 23:6
support 10:23 11:17
 57:17 71:6, 9 123:19
 127:23 178:7 181:2
 230:1, 5, 9, 10, 12, 17
supported 123:3 124:3
supporting 87:20 115:5
 174:5
supposed 144:24
sure 17:4 20:9 21:8, 21
 28:11, 14 35:22 37:23
 41:1 53:11, 20, 24 56:6
 68:21 70:14 75:23
 77:13 80:5 83:15 85:19
 95:22 102:20 104:7
 108:14 112:22 113:8
 114:9 121:22 122:14, 16
 123:10 130:13, 15 131:7

132:8 139:14 145:1, 21
147:20 150:11 155:20
157:16 160:11 161:1, 3
164:22, 25 165:2 171:3
178:11 184:10 188:21
190:6 204:3, 23 206:21
207:22 209:4, 5 212:7
213:2, 11, 14 214:2
215:20 216:13 217:20
229:10 234:7 236:14
surely 169:15
surprised 144:23
Suture 61:3 63:21
118:13, 18 218:6 219:19
Suzanne 103:3 196:6, 9
SVP 10:22 150:1
swear 6:17
sweat 170:5
switch 158:13
switched 160:9 184:18
202:15
switching 160:12 164:7
165:2 179:3
sworn 6:24
synced 238:5
synonymous 65:13
system 25:3 91:21, 23,
25 92:15 93:5 114:3
217:11, 12
systems 91:7, 8, 9, 10, 12,
13 171:16 229:13

< T >

table 81:7 82:13 83:18
87:13 145:11
tables 32:2 81:25 82:2,
3 83:8, 16 145:15, 17, 22
146:2
tactic 152:4
tactics 151:10
take 7:16, 17 15:13
19:11 20:14 25:4 38:18
39:21 40:19, 22 43:2
45:11 47:8 48:23 49:24
52:5 56:4 57:13 68:9
73:12 76:3 90:15, 18
92:5 94:4 95:22 97:5
99:1 100:5 101:6 102:8
105:13 109:24 111:19
112:25 113:2, 8 116:21
117:13 119:7, 19 124:15,
17 148:7 152:18 164:6
175:18 177:14 185:15
186:6 189:25 194:4
198:6 211:3 229:16
231:15 232:10
taken 1:12 6:3, 6 7:5
21:5 35:18, 23 56:8
68:2 93:16 117:1
124:20 139:17 164:11
188:11 194:7 211:6

212:10, 16 214:8 216:4
231:19 240:10
takes 121:19
talk 10:24 21:20 29:15,
22 30:2 60:17 85:14
114:13 127:3 138:4, 16
169:8 198:21 229:1
talked 20:20 29:12
30:7 31:2 37:10 49:17
58:6 102:15 117:8
132:24 135:2 138:11
140:6 144:13 158:12
162:15 177:5 197:23
228:25
talking 23:19 30:11
36:20, 22 39:11 53:23
56:15 67:9 69:9, 23
158:23 176:11 189:21
196:3 201:20 203:21
226:24
talks 138:23
Talla 170:2
targeting 174:24
tasked 16:24
tasks 11:4, 5 188:4
tax 10:12 17:25 18:4, 8,
11, 13 19:15, 22, 23, 25
40:7, 8 44:4, 12 45:4, 6
46:10, 14, 18 47:22 49:7
51:10 61:14 71:4, 5, 25
72:9, 13 82:2 83:22, 23
84:1, 2 86:5, 7, 15, 21
87:5, 14 88:3 90:6 99:6
115:3 130:9, 22 131:3, 4,
9, 10, 11 145:15 150:1
171:9 198:2 199:6
201:7, 9 203:23 205:15,
21 224:1, 23
taxes 88:19, 22
team 11:8 12:1, 2, 4, 5, 8,
10 17:18 22:7 46:13
52:22 61:15 81:16 95:4,
5 96:19 99:13 100:21
102:20, 24, 25 112:1
141:25 153:10 161:16,
17 163:13 167:3 191:2
196:1, 3, 18 228:11
teams 11:2, 18, 22, 24
12:2, 3, 4
Tech 9:1, 14 162:11
technical 25:2 139:11
technically 202:3
technique 140:16
Technologies 194:24
195:22
technology 71:6, 10, 24
161:4 209:1
TECO 157:18, 22, 23, 24
158:3, 5, 6, 13, 15 159:2,
5
telephone 218:7

tell 7:11, 25 15:14, 20
19:12 38:19 40:19
45:12 47:9 48:24 52:6
54:16 55:4 56:19 59:15
60:12, 13, 22 62:3 63:4
68:10 73:12 74:6 76:4
86:25 94:4 97:5 99:1
100:5 102:8 105:14
109:24 111:20 114:24
117:13 119:8, 20 121:15
123:24 133:17 148:8
152:19 177:15 186:6
189:25 194:22 198:7
225:11 232:11
telling 8:3 54:3 108:2
temporarily 142:9
143:25
ten 27:15 171:18 172:4,
5, 7, 8, 10, 12, 13 173:1
197:1, 2
ten-minute 56:5
tenure 129:21 196:12
197:8
Terete 13:19 14:13
103:4 137:22, 23 138:4
140:2
term 171:16
terminate 106:22
terminated 13:9, 13
55:15 188:25 206:4
terminates 94:16
terms 26:11 31:1 77:15,
24 182:7 221:4
terribly 169:14
test 32:23 33:7, 9
196:23
testified 6:24 233:23
testify 8:10, 13 15:17, 18
testimony 6:18 240:10,
14
text 14:7 15:2
TFA 43:25 44:3, 7
Thank 7:20 12:11
57:24 94:3 110:22
120:25 194:19 207:25
237:25 238:2
Thanks 40:17 56:15
thing 25:20 39:25 60:6
65:11 78:23 125:23
148:17 156:15 179:7
207:14 209:11
things 21:13 23:11, 14,
18 29:25 30:10 34:5
36:12 65:12 79:17
84:12 85:9 91:7 106:18
107:12 113:18 121:20
123:4, 20 124:4, 15
127:25 132:4 134:20
181:17 183:19 209:2
think 19:16 26:13 28:7
31:1, 22 34:21 40:17

42:2 44:14 45:1 53:6,
22 54:2, 17 56:18, 20
57:3, 9 59:23 60:21
61:20 64:20 71:17 72:4
80:14 82:24 84:8 85:12,
17 86:21 88:17 93:14
106:10 115:12 121:22,
24 125:12 130:15, 24
134:22 135:7 140:14
146:15 147:16 151:9
152:3, 7 187:11 193:24
195:21 196:8 202:3, 5
203:3 207:18 211:3
214:25 215:25 224:23
227:24 228:1, 22 229:9
233:7 236:7
thinking 102:18 148:15
third 11:9 24:5, 10
64:5 66:14 69:19 70:23
87:9, 20 94:11 98:8, 12,
14, 15 113:23 133:3
159:5, 8 161:19 165:21
178:25 195:6 199:10
208:21 232:15, 21
third-party 78:24 79:6
80:6 113:2, 9, 18 114:10
115:23 159:19 160:14
190:21
Thornton 208:3, 8
thought 48:9 61:21
194:11 200:13 226:18
thoughts 154:6
thread 40:22 41:3 47:11
threat 39:23 174:22
201:14
threatened 66:22 181:14
threats 11:11 35:8
174:17 206:15
three 11:2 19:7 74:5
77:8 86:25 87:15 176:4
180:17 190:13 203:17
225:15, 16
Thursday 70:16
time 9:18 10:10, 17, 18
12:16, 18 18:11 19:15
20:25 21:16 22:15 28:3
30:12, 20 32:10 35:8
36:3, 5 38:15, 21 39:22
40:23 41:6, 15 44:12
45:2 46:17 47:11 50:4
51:18 52:8, 10 53:2, 13
58:13, 24 59:11, 22
61:11, 21 62:8 63:10, 16,
19 66:21 67:24 68:13
69:24 70:13 73:12, 15
74:1 76:7, 11, 20, 21
90:14 93:13 94:8 95:16
97:7, 8 101:7 103:5
106:13, 22 110:2 116:18
118:18 119:2 123:2, 20
125:3 126:6 137:1, 21

142:15, 18 143:10 145:6
 146:24 149:16 150:8, 12
 152:11 155:20 158:12
 159:6, 11, 16 160:7
 161:15 164:18, 22 165:8
 166:24 169:23 175:25
 176:24 177:10, 18 178:4,
 6, 9, 13, 24 188:24
 194:25 197:19 198:9
 200:21 214:16, 21 215:3
 216:25 221:19 223:6, 9
 225:19, 25 231:4, 8
 234:12 236:3 238:1
timeframe 158:23
 162:10, 17
timeline 149:17 178:11
timelines 190:12 220:21
times 35:7 115:6 158:6
 159:6 229:10
timestamp 118:14
timestamps 134:2
timing 23:13 115:1
 147:24
tiny 186:20
Tisdale 103:3 142:6
 196:5
today 7:16 8:7 47:19
 72:17 121:24 122:7, 16
 127:18, 22 128:8 136:17
 143:13 152:1 187:20
 210:8 221:2
today's 15:20
told 28:19 29:8 31:18
 33:22 34:3 55:10 91:20,
 25 116:11 134:1, 3
 147:21 163:22 179:6
 185:20 198:14 199:11
 214:15 222:5
tool 39:5, 7, 11, 13, 14, 18,
 19 81:6, 10, 22
tools 92:15 183:7, 18
top 52:14 69:9 105:24
 107:17 148:10, 15 154:5
 155:15 176:13 180:5
 186:10 192:1 196:22
 200:6 203:13, 17
topic 164:8 194:5
 195:18
topics 32:23
touch 13:1, 23 14:5, 25
TOWER 2:11
TPG 27:12
tracked 24:8
trade 20:14 21:5 22:10,
 13, 18, 24 23:6 28:20
 29:9, 14 31:20, 21 33:24
 37:1, 4, 8, 11, 12, 15
 60:14, 24 76:15 77:3, 10
 100:17 118:14, 19, 24
 119:3 121:20 123:12
 126:20, 24 128:18

132:12 134:22 135:3, 8,
 19 136:6 140:3 195:5,
 14, 23 206:17, 23 209:17
 210:10 213:22 232:3
 234:1, 9
training 20:25 21:4, 8, 9,
 13, 24 22:8, 15, 17, 20, 23
 23:1, 2, 5, 9, 17, 18 24:2,
 5, 8, 10 25:3 36:2
 138:25 140:3, 5 143:8
 144:12, 16 187:20
trainings 23:17
transcript 7:13, 22
 238:6, 14 240:9
transcripts 16:9
Transfer 205:9, 11
transition 201:23
translation 202:1
treated 111:13
treatment 149:4
trial 238:11
trouble 187:24 188:4
true 19:1, 15, 25 23:7
 25:11, 20, 21 28:13, 17
 29:4, 10 32:7, 11, 25
 33:4 37:16, 17, 18, 19, 23
 38:3, 5 39:15 48:10
 49:2, 12, 19 50:5, 25
 51:12, 16, 20 52:11, 16
 53:1 54:4, 7, 24 55:5, 11,
 16 57:11 63:16 64:20
 65:22 66:2, 9, 17, 19
 67:17 74:2, 16, 19, 24
 75:2, 14 78:25 79:7, 8,
 10, 15, 18, 23 80:8, 17
 83:10, 20 84:6, 19, 20
 86:15, 22 88:19, 25
 89:22 93:7 99:22 106:7,
 16, 20, 24 107:15 108:10
 113:20, 21 125:18 131:3
 135:25 136:5 137:3, 4
 138:7 142:20 143:13
 145:12 149:11 156:17,
 24 159:13 160:9 163:21
 165:19, 23 176:4 181:12,
 15 184:3 191:13, 14
 199:15, 16 214:17, 24
 215:6, 9 223:8 226:1, 5
 230:1 234:2, 10 240:9,
 14
Trustpoint.One 239:12,
 14
truth 6:18, 19
try 7:15 98:19 100:16
trying 18:21 40:24
 87:18 97:18 119:3
 149:17, 21 150:12
 151:24 176:25 196:8
 236:20
Tucson 170:3

Tuesday 166:16 176:14,
 22, 23 177:6
turn 76:14 81:4 87:23
 92:10 121:2 122:3, 23
 126:1 127:12 140:18
two 40:21 59:10 60:21
 68:15, 24 69:22 74:5
 81:5, 25 82:17 87:2, 4, 8
 115:1 120:18 134:20
 147:25 173:22 180:17,
 18 181:17 201:12
 203:13 204:16, 18, 25
 225:15 228:12, 19
type 21:19 88:4
types 16:12 25:1, 12
 27:14 63:6
typical 50:19, 21
typically 11:23 19:6
 204:22

 < U >
uh-huh 7:21
uh-uh 7:22
UIL 204:19 206:10
ULI 205:1
ultimately 52:22 99:20
 181:8
umbrella 18:7, 16 202:19
underestimate 43:11
underneath 52:15 162:8
 179:19
understand 15:16 16:12
 40:24 43:7 44:3 53:7
 69:18, 19 70:3 71:9
 80:3 81:9 84:16 85:23
 90:8 97:22 98:2 105:7
 109:1 125:20 127:8
 130:8, 13, 17 131:7, 15
 132:11 134:20 144:15
 147:4, 21 161:1 162:18
 163:10 165:1 173:9
 178:3, 11 179:23 181:4
 183:13 185:6 188:9, 20
 232:21 236:17
understanding 20:18, 19
 24:22, 23 25:4 27:8, 12
 28:1 33:1, 5 39:7 41:17
 45:2 64:21 65:24 66:13
 68:1, 17 71:19, 20 75:3
 77:11, 14, 20, 23 83:5, 7
 87:6 88:18 89:10 93:3
 94:19 95:24 96:18
 104:6 106:17 107:2, 20
 114:22 130:1, 4 137:23
 138:9 139:10, 12 142:21
 145:3, 16 148:12 153:18
 159:5 160:3, 18 163:2
 180:15 182:7 183:15, 24
 185:1, 7 186:17 189:2
 199:5, 9 201:19 202:14

204:25 212:6 222:2
 224:20 225:4, 5 226:16
understands 90:5
understood 52:25 53:4
 74:11 88:21, 24 106:22
 107:5 130:19 134:16
 135:2 221:21 236:14
undertaking 56:23
unfairly 59:21
unintelligible 11:9, 18
 114:14 120:17, 19
 128:21 159:10 210:2
 220:4 228:18
unique 32:1
UNITED 1:1 55:22
University 9:10
unlawful 206:16
unnecessarily 94:13
unsynced 238:6
UPCO 157:7, 9, 14
 160:4, 9 162:4, 15, 21
 163:11, 15, 19, 20 179:8
 191:17, 20, 24 192:13, 25
 193:7 235:9
UPCO's 161:24
updated 26:8, 17
updates 127:7
upgrade 151:11 161:25
 162:11 163:4
upload 139:1 140:23
uploaded 137:12 139:9
 146:4, 5, 8
Upper 157:10, 12
upset 151:10 152:4
urgent 18:14
use 19:25 20:6 55:6
 59:20 67:20 91:21 93:6
 108:23 114:10 143:8
 151:21 160:14, 23 161:5
 163:19, 20 165:7 170:4,
 12 172:24, 25 183:2, 4, 9
 184:6, 12 201:25 205:14
 207:6 208:20, 22 209:5
 217:8 229:16
user 25:2, 4, 5 30:9
 62:6 167:23 168:1, 4, 21
uses 44:4
usually 19:16
Utegration 170:18, 21
 174:17, 24 198:19, 25
 199:2, 12 201:14 202:15
 203:22 204:1, 6
Utegration's 199:18
utilities 18:18 168:3
 171:10 201:21 207:11
 208:18 229:3 235:10
utility 109:2 150:20
 153:20 201:15, 17 205:4,
 12 207:6, 8 208:9
utilize 171:4 183:6
utilized 191:9

utilizing 178:5 191:16
192:12 214:12

< V >

Vadim 10:7 43:10, 13,
16 44:20, 22 47:20
74:24 75:1, 7, 10 88:18
89:9, 19

Vadim's 39:3

valuable 84:4 175:20

value 18:22 19:4, 22
235:13, 17

varied 11:6

various 12:1 22:25

91:6 130:9, 22, 24

150:19, 24 213:14

225:19, 25

vendor 57:6, 10 99:14

154:2 165:19 181:9, 20

184:4, 11 185:4, 9, 12, 17,

18, 25 190:7, 17 205:23

209:22 210:1 226:23

227:10

vendors 114:10 115:24

116:4 160:14 174:1

Veolia 56:2, 3

verbal 180:25

verification 138:5

verifications 223:7

verified 123:2, 20 124:8

125:3 126:6, 7 134:24

135:6, 18 136:4 137:1

139:6 143:10 222:21

verify 120:7 133:12, 17

134:6, 11

verifying 120:3 126:14

136:11

versa 218:19

version 73:21 111:7, 13

114:11 157:15, 25 158:9,

14 160:10 165:3 170:14

178:17 179:3, 4 202:9

versions 151:12

versus 6:4 37:13 54:25

163:13 171:25 240:11

viable 168:13

Vice 10:25 11:1, 20

218:18 236:5

video 216:2 238:5, 7

VIDEOGRAPHER 2:17

6:2 56:7, 9 93:15, 17

116:25 117:2 124:18, 21

164:9, 12 194:6, 8 211:5,

7 216:2, 5 231:11, 14, 17,

20 238:4, 8, 12, 16, 18

videos 215:10

videotaped 6:3

view 160:21 161:3

192:24 230:24 231:5

viewed 156:22 193:5

violate 143:19 144:3

violated 66:23

violation 91:1

virtually 82:1

vis-à-vis 217:24 219:10

231:7

vocal 71:4

voluntary 224:17

VP 19:23 71:4 72:9

115:3 200:21

vs 1:7

Vu 46:5 191:9 192:2,

18, 20 193:5

< W >

wait 238:7

waiving 123:11

walk 21:10

walked 166:14

Wallace 57:18

want 40:20 41:8 43:6

47:14 72:17 76:14

92:10, 11 94:10 98:18

101:8 104:7 116:21

121:1, 11 122:23 123:24

125:11 127:12 129:24

133:1 134:12 137:5

150:11 157:25 158:21

159:3 160:25 164:6

167:18 169:8 170:13

176:2 177:20 194:21

201:12 216:1, 13 217:20

222:6, 7 229:10 231:11

232:13 234:25 236:14

wanted 43:7 72:22

91:22 153:1 163:19, 20,

23 182:24

wanting 160:18

Ward 103:4 196:6, 9

watch 93:11

Water 55:23

Waterhouse 212:12

wave 104:12 108:7, 22,

23 110:9, 19, 25 156:1

waves 108:9, 13, 19

110:6 112:13

way 16:19 28:25 31:3,

22 32:1, 2 48:14 50:9

57:3 75:7 76:24 108:12

111:15 113:14 131:13

132:20 154:11, 19

155:19 162:15 175:9

190:11 195:2 201:3

209:9 215:21 224:23

229:19, 23 240:18

WAYBACK 4:6 92:7, 8

ways 30:25 184:16

217:14

WEBSITE 4:7 20:10

39:12 40:2, 10 41:11, 21

46:17 67:24 92:7, 20, 22

126:8, 9, 10, 12, 21

133:21 137:13 139:2, 10,

11, 12, 13 140:1, 13

146:5 214:24 215:6, 11,

16, 19

Websites 133:13 137:10

WEC 170:2

week 186:20 187:17

weeks 187:16 228:11

welcome 40:20 179:12

Well 12:9 21:18 24:21

25:2 38:8 39:13 41:20

46:18 53:5 55:10 61:3

63:10 74:24 86:19 89:8

120:8, 16, 18, 20 132:11

135:1 138:7 147:21

152:1 155:7 156:9

160:16 163:4 164:22

172:4 183:9 188:14

191:8 218:22 229:2

230:20

went 33:3 104:11, 13

110:19, 25 176:18 190:8

230:23

we're 25:13 53:24

62:24 67:9 78:17 117:4

126:25 139:14 164:7

172:9 176:11 178:12

182:22 184:15 188:4

238:11, 18

we've 7:12 14:7 16:3

20:20 21:18 24:25

29:12 30:7, 17, 18 44:6

52:1 58:5 64:12 78:15

93:12 139:14 158:11

165:11 194:3 210:22, 24

212:21 232:14

WGL 170:3

White 173:8, 9, 11

wield 173:25

Williams 35:2, 9 148:24

151:15, 18 175:17, 25

willing 97:19 172:24

175:18 177:8 184:4

win 43:6 54:3, 23

winning 51:14 154:14

wireframes 81:2, 3

WITNESS 6:16, 21

18:20 20:9 26:7 28:5,

23 29:6, 12 31:9 33:13

34:1, 13, 20 37:21 39:25

41:23, 25 42:19 43:5

46:16 47:3 48:2, 19

49:14 53:10 54:7, 12, 21

59:10 63:18 65:24 66:4,

11 67:1, 7, 19 68:20, 22

69:3, 6 70:7 71:12 72:3

77:6, 21 78:5, 20 79:2,

12, 20 80:10 81:15

83:12 84:1, 8 85:4

86:12 88:21 89:2, 14, 24

90:10, 22 91:5, 16 92:22

93:9 96:18 97:25 98:21

100:24 101:10, 21

104:23 106:9 107:1, 9

108:1, 25 109:7, 14

111:2, 9 113:6 114:6, 18

122:13 123:8 124:11, 17

125:22 126:23 128:4

130:12 131:6, 19 132:1,

8, 15 135:11, 22 136:2, 9,

21 139:20 143:21

145:14, 24 149:23 151:2,

17 152:14 156:12, 19

159:15, 23 160:25

161:23 181:17 184:8

193:2, 9 206:19 212:14,

20 213:2, 11, 18 214:11,

19 226:21 233:11, 13, 14

234:5, 12 235:20 236:25

237:10

won 52:25 53:3, 8 54:12

Wong 197:24

word 28:2 29:14 42:2

87:24 124:4 125:4

187:5 203:4

worded 47:19 48:14

words 71:14, 19, 20

91:24 150:15 154:21

work 8:21 10:7, 9, 13

11:9 26:15 34:13 35:5

42:21 43:15, 19 44:17

46:10 49:23 51:19 52:2

53:1, 3, 8, 11, 19 54:3, 13,

19, 24, 25 55:1 57:5, 6, 7,

14 61:24 62:1 96:22

97:19 98:19 104:9, 20,

24 105:17 106:14

107:21 129:7 147:5, 9,

13, 22 148:2 159:20, 23

160:1, 3 161:5, 19, 25

162:9, 10, 16, 22 163:4,

12, 16, 17, 20, 22 164:3

165:21 174:1 183:3, 13,

25 187:16, 17 188:15, 23

189:1, 2, 11,

written 23:19 24:4
30:23 35:17, 22 78:6
85:18 88:11 175:9
wrong 34:18
wrote 40:17 148:9
154:16, 17, 21 176:18

< Y >

Yeah 12:10 16:1 19:18
23:25 24:18 30:7 40:24
68:19 70:14 74:21
75:21 76:19, 20 77:8, 23
78:16, 23 82:16 85:25
86:14 87:17 91:8 113:8,
13 114:24 116:23
117:19 118:2 121:9
122:16 123:10 125:14,
22 130:15 131:9 143:23
154:16, 19, 22 164:7
167:18 184:10 193:4
197:22 206:1 207:24, 25
212:16 213:14 214:25
215:23 223:12 224:14
225:5 228:8 230:7
231:13 234:7, 12 235:5
238:14

year 9:8 38:13 44:7, 11
83:23 84:1, 2 86:5
224:11

years 7:9 15:9 20:21
21:18 22:2 27:16 31:10
32:19 43:14 65:21
196:16 197:1, 2

Yep 121:7 133:10 216:2
yesterday 15:22 186:12
187:24

Yost 14:18 103:2

Yulu 186:12, 14, 15, 16
187:13 188:21 197:24
223:15, 24 224:7 234:15,
21

< Z >

zero 169:14

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

LUCASYS INC.,

Plaintiff,

v.

POWERPLAN, INC.,

Defendant.

Civil Action File

No.: 1:20-cv-2987-AT

AMENDED NOTICE OF DEPOSITION OF JIM DAHLBY

PLEASE TAKE NOTICE that, pursuant Federal Rule of Civil Procedure 30, counsel for Plaintiff Lucasys Inc. will take the oral deposition of **Jim Dahlby** at the office of **Robbins Alloy Belinfante Littlefield LLC, 500 14th Street, N.W., Atlanta, GA 30318**, unless the parties agree on another location, on **August 5, 2022**, beginning at **9:30 a.m.** and continuing thereafter until completed.

The deposition shall be taken before a Notary Public or some other officer authorized by law to administer oaths for use at trial. The deposition will be taken by oral examination with a written and/or sound and visual record made thereof (e.g., videotape, LiveNote, etc.). The deposition will be taken for the purposes of cross-examination, discovery, and for all other purposes permitted under the Federal Rules of Civil Procedure or other applicable law.



This 23rd day of June, 2022.

/s/ Jason S. Alloy

Richard L. Robbins

Georgia Bar No. 608030

rrobbins@robbinsfirm.com

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La Jolla, California 92037

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(858) 964-2301 (fax)

Counsel for Plaintiff Lucasys Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the within and foregoing **AMENDED NOTICE OF DEPOSITION OF JIM DAHLBY** with the Clerk of Court using the CM/ECF electronic filing system which will automatically send counsel of record e-mail notification of such filing.

This 23rd day of June, 2022.

/s/ Jason S. Alloy
Jason S. Alloy

Message

From: Jim Dahlby [jdahlby@pwrplan.com]
Sent: 10/15/2020 6:50:19 PM
To: Joe Gomes [Joe.Gomes@powerplan.com]
CC: Henry Van de Syde [henry.vandesype@powerplan.com]; Drea Toretto [dtoretto@pwrplan.com]; Joost Rutten [Joost.Rutten@powerplan.com]; Suzanne Ward [suzanne.ward@powerplan.com]; Neal Tisdale [neal.tisdale@powerplan.com]; Mike Casella [mike.casella@powerplan.com]
Subject: Re: Suite Sku's

I would say pricing was based on a value where tax was a smaller compliance burden and priced relative to competitive environment. The value in tax Benefits was generally achieved from implementation of Plant system. Tax was usually [REDACTED] and Plant was [REDACTED]

In addition to tax value being less, there was also a plant follows tax approach where many customers would buy tax (approved by Tax Vp) and through the project we'd look for all the opportunities for better data and use tax to help sell plant.

Tax Repairs we gave away as a free upgrade to project accounting for awhile as a defense against Erps, we later started charging for it.

Tax provisions and Prop tax have also always had competition from point solutions.

Jim Dahlby

(m) +1.678.269.7950

Sent from mobile device.

On Oct 15, 2020, at 5:17 PM, Joe Gomes <Joe.Gomes@powerplan.com> wrote:

Henry – Thanks!

Suzanne / Neal – FYI... view of Trailing Twelve Month Revenue by Product

Jim – I've seen this data before, but always jumps out at me when I see it again. We must have been giving tax away in the early days. Footprint is on par with fixed asset accounting... but way lower price point. I would argue that value prop is same or greater? curious on your thoughts

Joe Gomes

Chief Executive Officer

Office: +1 678.223.2748

Mobile: +1 404.915.9827

jgomes@powerplan.com

PowerPlan.com

<image001.png>

From: Henry Van de Syde <henry.vandesype@powerplan.com>

Sent: Thursday, October 15, 2020 11:29 AM

To: Drea Toretto <dtoretto@pwrplan.com>; Joe Gomes <Joe.Gomes@powerplan.com>; Joost Rutten <Joost.Rutten@powerplan.com>



Cc: Mike Casella <mike.casella@powerplan.com>

Subject: RE: Suite Sku's

TTM Revenue for Suite of families [REDACTED] of [REDACTED] Total. Remaining revenue is made up by PS, managed and cloud services, reimbursable expenses, and term.

ACCTG - [REDACTED]

FP&A - [REDACTED]

Platform - [REDACTED]

Rate & ROE - [REDACTED]

Tax - [REDACTED]

First two tabs of attached file are pivots that show the data by quarter and show the breakdown between license, subscription and maintenance different ways.

<image004.jpg>

<image006.jpg>

Henry Van de Sype

Vice President, Financial Planning & Analysis

Cell: +1 609 346 2153

Henry.VandeSype@PowerPlan.com

PowerPlan.com

<image008.png>

From: Drea Torette <dtorette@pwrplan.com>

Sent: Wednesday, October 14, 2020 8:16 PM

To: Joe Gomes <Joe.Gomes@powerplan.com>; Joost Rutten <Joost.Rutten@powerplan.com>; Henry Van de Sype <henry.vandesype@powerplan.com>

Cc: Mike Casella <mike.casella@powerplan.com>

Subject: RE: Suite Sku's

Evening everyone.

Henry in SF we have suites of families. To streamline the process we mapped them this way:

AIO	FP&A
Capital P&F	FP&A
Fixed Asset	ACCTG
Income Tax	TAX
Lease Acctg	ACCTG
Platform	Platform
Project Cost Mgt	FP&A

Property Tax	TAX
Rate Case and ROE	Rate & ROE
WPA	Platform

If you want to chat about anything let us know. Thanks.

Drea Toretti

Office: +1 678.202.1680
 Mobile: +1 404.642.1116
www.PowerPlan.com

<image009.png>

From: Joe Gomes <Joe.Gomes@powerplan.com>

Sent: Wednesday, October 14, 2020 6:49 PM

To: Drea Toretti <dtoretti@pwrplan.com>; Joost Rutten <Joost.Rutten@powerplan.com>; Henry Van de Sype <henry.vandesype@powerplan.com>

Subject: Suite Sku's

Drea,

Can you send the solution suite groupings (Accounting, Tax, FP&A, Regulatory, and Platform) that we used to segment the TAM to Henry & Joost?

H&J: can you give me a breakdown of product revenue (license and maintenance) for the five suites? 2020 is fine, or if TTM is easier, that works too.

Will need this by mid-day on Friday...

Thanks

Joe

Joe Gomes

Chief Executive Officer

Office: +1 678.223.2748
 Mobile: +1 404.915.9627
jgomes@powerplan.com
PowerPlan.com

<image001.png>

Message

From: Jim Dahlby [jdahlby@pwrplan.com]
Sent: 7/25/2018 11:59:33 AM
To: Jamie Carr [jcarr@pwrplan.com]; Drea Toretti [dtoretti@pwrplan.com]
CC: Nick Alexander [nalexander@pwrplan.com]; Phil Zegarelli [pzegarelli@pwrplan.com]
Subject: RE: ARAM Calc - Calculation Process Finished

What happens when you click?

Jim Dahlby

Mobile: +1 678.269 7950
 jdahlby@pwrplan.com



PLAN

From: Jamie Carr
Sent: Wednesday, July 25, 2018 9:34 AM
To: Drea Toretti <dtoretti@pwrplan.com>
Cc: Jim Dahlby <jdahlby@pwrplan.com>; Nick Alexander <nalexander@pwrplan.com>; Phil Zegarelli <pzegarelli@pwrplan.com>
Subject: Re: ARAM Calc - Calculation Process Finished

Not exactly. I got the email that said my calculation was done, as though I requested it. But of course I didn't. Maybe he just sent it so I'd see it. Not sure.

Sent from my iPhone

On Jul 25, 2018, at 9:19 AM, Drea Toretti <dtoretti@pwrplan.com> wrote:

So he sent it to you.... And let you run it.

Drea Toretti

Office: +1 878.202 1680

<image003.png>

From: Jamie Carr
Sent: Wednesday, July 25, 2018 8:20 AM
To: Jim Dahlby <jdahlby@pwrplan.com>; Nick Alexander <nalexander@pwrplan.com>; Drea Toretti <dtoretti@pwrplan.com>
Cc: Phil Zegarelli <pzegarelli@pwrplan.com>
Subject: Fwd: ARAM Calc - Calculation Process Finished

This is from Vadim's new company. Interesting tool. Spelling is a bit of an issue, but the tool would be competitive to us.

Sent from my iPhone

Begin forwarded message:

From: "ARAM Calc Lite" <no-reply@lucasys.com>
Date: July 25, 2018 at 12:32:03 AM EDT



To: jcarr@pwrplan.com

Subject: ARAM Calc - Calculation Process Finished

Reply-To: <no-reply@lucasys.com>



Calculation Process Finished

Your calculation has been processed successfully, click on below button for see your calculation result.

[Show Result](#)

Please ignore this email if you did not make this request.

Message

From: Paul Crist [pcrist@pwrplan.com]
Sent: 5/22/2019 7:28:26 PM
To: Joe Gomes [Joe.Gomes@powerplan.com]; Joost Rutten [Joost.Rutten@powerplan.com]; Brett Bertz [brett.bertz@powerplan.com]; John Budala [John.Budala@powerplan.com]; Elizabeth Cowart [ecowart@pwrplan.com]; Drea Toretti [dtoretti@pwrplan.com]; Sarah Park [spark@pwrplan.com]; Neil Kimber [nkimber@pwrplan.com]; Jim Dahlby [jdhaby@pwrplan.com]
Subject: Fwd: lucasys

Looks like potential new TFA competition.

Sent from my Verizon Samsung Galaxy smartphone

----- Original message -----

From: Matt Crye <mcrye@pwrplan.com>
Date: 5/22/19 4:27 PM (GMT-05:00)
To: Paul Crist <pcrist@pwrplan.com>, John Ericson <jericson@pwrplan.com>
Subject: RE: lucasys

RCC was outwardly pitching Lucasys at AGA/EEI this week.

Rumor is that Lucasys has TFA solution ready to go. We've known about Lucasys for at least a year, so having TFA by now would make sense. Vadim is extremely knowledgeable on the business problem.

Matt Crye

VP Strategic Accounts

Mobile: +1 678 576 4497
mcrye@pwrplan.com
PowerPlan.com



From: Paul Crist <pcrist@pwrplan.com>
Sent: Wednesday, May 22, 2019 4:24 PM
To: Matt Crye <mcrye@pwrplan.com>; John Ericson <jericson@pwrplan.com>
Subject: FW: lucasys

Competition at AEP. Any feedback on the letter and invoice yet?

Paul Crist
VP Global Sales
pcrist@pwrplan.com
616.813.6150



From: Skip Fowler <Skip.Fowler@powerplan.com>
Sent: Wednesday, May 22, 2019 4:20 PM
To: Paul Crist <pcrist@pwrplan.com>; Jim Dahlby <jdhaby@pwrplan.com>
Subject: FW: lucasys



FYI

Skip Fowler

Vice President Professional Services

From: Colin Currier

Sent: Wednesday, May 22, 2019 11:20 AM

To: Michael Bradley <mbradley@pwrplan.com>; Nick Alexander <nalexander@pwrplan.com>; Jamie Carr <jcarr@pwrplan.com>; Sebastian Cordoba <scordoba@pwrplan.com>; Jarrett Skov <jskov@pwrplan.com>; Elizabeth Cowart <ecowart@pwrplan.com>; Skip Fowler <Skip.Fowler@powerplan.com>

Cc: Tim Price <tprice@pwrplan.com>; Christine Bell <christine.bell@powerplan.com>; Phil Zegarelli <pzegarelli@pwrplan.com>; Rob Burns <rburns@pwrplan.com>; Scott Avery <Scott.Avery@powerplan.com>; Peyton Proctor <jproctor@pwrplan.com>

Subject: RE: lucasys

I know I probably was not supposed to see this, but Kevin Keller and Linda at AEP have a meeting setup with Lucasys about a SOW. So the competition is real.

Best,

Colin Currier

Solution Architect, Professional Services

Mobile: +1 803.389.9158

ccurrier@pwrplan.com

Powerplan.com



From: Michael Bradley

Sent: Wednesday, May 22, 2019 10:29 AM

To: Nick Alexander <nalexander@pwrplan.com>; Jamie Carr <jcarr@pwrplan.com>; Sebastian Cordoba <scordoba@pwrplan.com>; Jarrett Skov <jskov@pwrplan.com>; Elizabeth Cowart <ecowart@pwrplan.com>; Skip Fowler <Skip.Fowler@powerplan.com>

Cc: Tim Price <tprice@pwrplan.com>; Christine Bell <christine.bell@powerplan.com>; Phil Zegarelli <pzegarelli@pwrplan.com>; Colin Currier <ccurrier@pwrplan.com>; Rob Burns <rburns@pwrplan.com>; Scott Avery <Scott.Avery@powerplan.com>; Peyton Proctor <jproctor@pwrplan.com>

Subject: lucasys

And the fire beneath us grows...<https://www.lucasys.com/tax-solutions>

I didn't find that the solution specifically says it takes on tax depreciation functionality, it certainly makes an intrusion on our space. I suspect that this product is foundation for a larger competitive product. If you watch the video, it indicates functionality for analysis, forecasts, reconciliation, and ARAM/RSG calculations.

Vadim is formidable and we shouldn't underestimate him.

Michael Bradley

Sr. Manager

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Mobile: +1 770.712.8738

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From: Michael Bradley
Sent: Monday, 20 May, 2019 7:59 AM
To: Nick Alexander <nalexander@pwrplan.com>; Phil Zegarelli <pzegarelli@pwrplan.com>; Jamie Carr <jcarr@pwrplan.com>; Colin Currier <ccurrier@pwrplan.com>; Rob Burns <rburns@pwrplan.com>; Sebastian Cordoba <scordoba@pwrplan.com>; Jarrett Skov <jskov@pwrplan.com>; Peyton Proctor <jpproctor@pwrplan.com>; Scott Avery <Scott.Avery@powerplan.com>
Cc: Tim Price <tprice@pwrplan.com>; Christine Bell <christine.bell@powerplan.com>
Subject: RE: Big News: IRS notice regarding excess deferred taxes

The battle to not use aram was lost a long time ago?

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From: Nick Alexander
Sent: Monday, 20 May, 2019 7:56 AM
To: Michael Bradley <mbradley@pwrplan.com>; Phil Zegarelli <pzegarelli@pwrplan.com>; Jamie Carr <jcarr@pwrplan.com>; Colin Currier <ccurrier@pwrplan.com>; Rob Burns <rburns@pwrplan.com>; Sebastian Cordoba <scordoba@pwrplan.com>; Jarrett Skov <jskov@pwrplan.com>; Peyton Proctor <jpproctor@pwrplan.com>; Scott Avery <Scott.Avery@powerplan.com>
Cc: Tim Price <tprice@pwrplan.com>; Christine Bell <christine.bell@powerplan.com>
Subject: RE: Big News: IRS notice regarding excess deferred taxes

Phil, Jarrett and I were in the room, not sure if Jamie was at that point.

John did a good job trying to fill in for Dave Yankee (who was out last minute) but didn't get much movement on that question. Had 2 or 3 people raise their hands and people conceded it would be much easier but not likely because from an executive front the purpose of having ARAM was to average and move costs out.

It was interesting that it was paralleled by an EY presentation from Mike Reno later in the day who said that battle was lost a long time ago and has no chance.

Nick Alexander

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Nick.Alexander@PowerPlan.com

From: Michael Bradley
Sent: Monday, May 20, 2019 7:50 AM
To: Nick Alexander <nalexander@pwrplan.com>; Phil Zegarelli <pzegarelli@pwrplan.com>; Jamie Carr

<jcarr@pwrplan.com>; Colin Currier <ccurrier@pwrplan.com>; Rob Burns <rburns@pwrplan.com>; Sebastian Cordoba <scordoba@pwrplan.com>; Jarrett Skov <jskov@pwrplan.com>; Peyton Proctor <jpproctor@pwrplan.com>; Scott Avery <Scott.Avery@powerplan.com>
Cc: Tim Price <tprice@pwrplan.com>; Christine Bell <christine.bell@powerplan.com>
Subject: RE: Big News: IRS notice regarding excess deferred taxes

Did anyone attend the presentation? I'm curious about the rooms reaction to slides 12. It looks like they were going to ask "Where are my anti-ARAM activists in the room?"

Do we know if there was momentum for ARAM or no ARAM?

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From: Nick Alexander
Sent: Monday, 20 May, 2019 7:36 AM
To: Michael Bradley <mbradley@pwrplan.com>; Phil Zegarelli <pzegarelli@pwrplan.com>; Jamie Carr <jcarr@pwrplan.com>; Colin Currier <ccurrier@pwrplan.com>; Rob Burns <rburns@pwrplan.com>; Sebastian Cordoba <scordoba@pwrplan.com>; Jarrett Skov <jskov@pwrplan.com>; Peyton Proctor <jpproctor@pwrplan.com>; Scott Avery <Scott.Avery@powerplan.com>
Cc: Tim Price <tprice@pwrplan.com>; Christine Bell <christine.bell@powerplan.com>
Subject: RE: Big News: IRS notice regarding excess deferred taxes

Replying with the latest updated slide deck that was presented at Elevate. They made some updated comments to 2019-33.

Nick Alexander

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From: Michael Bradley
Sent: Wednesday, May 8, 2019 10:13 AM
To: Phil Zegarelli <pzegarelli@pwrplan.com>; Jamie Carr <jcarr@pwrplan.com>; Colin Currier <ccurrier@pwrplan.com>; Rob Burns <rburns@pwrplan.com>; Sebastian Cordoba <scordoba@pwrplan.com>; Jarrett Skov <jskov@pwrplan.com>; Peyton Proctor <jpproctor@pwrplan.com>; Scott Avery <Scott.Avery@powerplan.com>
Cc: Tim Price <tprice@pwrplan.com>; Nick Alexander <nalexander@pwrplan.com>; Christine Bell <christine.bell@powerplan.com>
Subject: RE: Big News: IRS notice regarding excess deferred taxes

One last thing for now because I just read through deloitte's slide changes and they could be useful.

Slides 11-14 are related

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From: Michael Bradley

Sent: Wednesday, 08 May, 2019 10:03 AM

To: Phil Zegarelli <pzegarelli@pwrplan.com>; Jamie Carr <jcarr@pwrplan.com>; Colin Currier <ccurrier@pwrplan.com>; Rob Burns <rburns@pwrplan.com>; Sebastian Cordoba <scordoba@pwrplan.com>; Jarrett Skov <jskov@pwrplan.com>; Peyton Proctor <jpproctor@pwrplan.com>; Scott Avery <Scott.Avery@powerplan.com>

Cc: Tim Price <tprice@pwrplan.com>; Nick Alexander (<nalexander@pwrplan.com> <nalexander@pwrplan.com>; Christine Bell <christine.bell@powerplan.com>

Subject: RE: Big News: IRS notice regarding excess deferred taxes

Also credit goes to Christine for mentioning it to me after Deloitte requested to change their conference slides on the topic.

Michael Bradley

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From: Michael Bradley

Sent: Wednesday, 08 May, 2019 10:01 AM

To: Phil Zegarelli <pzegarelli@pwrplan.com>; Jamie Carr <jcarr@pwrplan.com>; Colin Currier <ccurrier@pwrplan.com>; Rob Burns <rburns@pwrplan.com>; Sebastian Cordoba <scordoba@pwrplan.com>; Jarrett Skov <jskov@pwrplan.com>; Peyton Proctor <jpproctor@pwrplan.com>; Scott Avery <Scott.Avery@powerplan.com>

Cc: Tim Price <tprice@pwrplan.com>; Nick Alexander (<nalexander@pwrplan.com> <nalexander@pwrplan.com>; Christine Bell <christine.bell@powerplan.com>

Subject: Big News: IRS notice regarding excess deferred taxes

Notice 2019-33, Request for Comments on Necessary Clarifications to Normalization Requirements for Excess Tax Reserves Resulting from the Corporate Tax Rate Decrease (PDF)

I just did a read though and wanted to provide my interpretation and thoughts.

1. Seems to clarify that reversing excess deferred taxes faster than ARAM is a normalization violation and that tax is increased by the amount that they reversed faster than ARAM as a penalty if violated.
2. Some sections seems to come word for word out of how we explain things...e.g. the paragraph starting on page 6 (which is good)
3. Clarifies that reverse south georgia method is an alternative method and that it is not a normalization violation
4. Requests for comments on how to handle

- a. Situations where tax payers may have vintage account data but not in the form that the data is useful for ARAM without significant analysis and expense
 - i. They're wondering if there is a method that could be applied to determine what a reasonable amount of time/expense would be to get these records in order. (Percentage of rate base?)
- b. Situations where the tax payer already uses reverse south georgia
- c. Relationship between depreciation related NOLs and excess DIT
- d. Impacts of significant transactions
- e. Implementation of interim rates to reflect the TCJA's decrease in the corporate tax rate. **What could this mean?**
- f. Handling a rate case with a future test period
- g. Methodology of reversing protected vs unprotected ADIT after 2017 rate changes
- 5. Request for comment until July 29th, 2019
- b. I wonder if Powerplan should formulate a comment?

Reactions

- 1. If the ordering matters at all, I think it's obvious that the utility companies are concerned with the high costs of getting their record keeping into a place that can support an accurate ARAM calculation
 - a. I think the argument has another side that some might not be considering. If you're saying that you can't calculate your excess deferred taxes under ARAM accurately, how can you say that you can calculate the reversal of any deferred taxes accurately?
 - i. We should be more clear that deferred tax reconstructions are all "TCJA" related and that it's getting all of their timing differences in order
 - ii. Utilities might win this argument if they can side step that
 - b. I think we're directly involved in "the cost to the tax payer of assembling the data contained in the underlying books" between the provision and deferred tax projects.
 - i. What costs other than PowerPlan might go into the cost of setting up and using an ARAM method?
 - c. This is probably a lot of what EEI wanted to talk about behind closed doors
 - d. The service pack helps improve the visibility and ease of use regarding the rate change but I don't think it has a large impact the cost of getting their record keeping in order to justify.
- 2. 4g above kind of opens the door to all sorts of possibilities. Could they completely change how to handle deferred tax reversals? It's concerning because it doesn't specifically call out anything like AFUDC Equity or cost of removal.
- 3. How long does it normally take the IRS to provide notice after comments are closed?
- 4. This could definitely impact sales if the business case relies heavily on the need to configure for ARAM. Big deals like Exelon reconstructions might be put on hold.
- 5. We need to figure out where the big players stand on this.
- 6. How much information do we have on ARAM being better than RSGM for the utility?
- c. Even if the IRS makes a decision to allow more companies to use the RSGM, we should help form the business value in using ARAM
- 7. Opportunity
 - . This should provide more justification for the need to "basify" and improve the tool to move excess deferred taxes into a RSGM quickly and easily. If we don't do this, we'll start losing stuff to becoming "outside of the system adjustments"
 - a. Conversation starter with customers.

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PLA!

Message

From: Jim Dahlby [jdahlby@pwrplan.com]
 Sent: 10/27/2019 1:43:22 PM
 To: Jamie Carr [jcarr@pwrplan.com]
 Subject: Re: Lucasys

Let's talk later or in the morning. Ultimately marketing isn't in a position to drive content without help.

Someone on marketing team manages social posting, but don't know who these days.

Jim Dahlby

(m) +1.678.269.7950

Sent from mobile device.

On Oct 27, 2019, at 1:24 PM, Jamie Carr <jcarr@pwrplan.com> wrote:

Jim – I was going to send this to several execs, but don't want it to come across as overly critical. But clearly, we need to step up our game.

Vadim continues to build his team.

<https://www.linkedin.com/in/vu-nguyen-a3869947/>

Brett asked me several months ago if he should be concerned about Lucasys. I said yes. My answer remains yes, and considering how many people he has added recently, I'm even more concerned.

I was scrolling through the Lucasys LinkedIn page just now. Vadim is seemingly everywhere, and posting pictures of him and his team at conferences, as well as good other content. I wanted to see what we are posting on our LinkedIn page as a comparison. We've got some Monday Motivation and Wednesday Wisdom posts, but it took quite a bit of scrolling to get to any meaty content. In terms of recent conferences, we have only posted about a conference in Liverpool, England. I didn't scroll for others.

We're going to see him at AGA/EEI in November.

As someone who attends many of the conferences, how I can get some content out there? Until I looked at Vadim's page, it never dawned on me to check on our social media presence on LinkedIn. Do we post content somewhere else? One issue we have, at least with me, is that I'm needed to be so engrossed in projects that I don't have time to create content.

I'll get some pictures at TEI this week. Who can I send them for posting?

Jamie Carr

Director, Professional Services

Mobile: 330.603.3556

jcarr@pwrplan.com

PowerPlan.com

<image003.png>



Message

From: jdahlby@pwrplan.com [jdahlby@pwrplan.com]
Sent: 7/8/2019 8:47:09 AM
To: Jamie Carr [jcarr@pwrplan.com]
Subject: Re: [EXT] Draft RFP

Don't see anything, I hadn't read it before I sent your email.

I thought I interpreted a comment that vadim would have a harder time because he doesn't have Provision. I do think its interesting that they didn't specify PowerTax.

Jim Dahlby

(m) +1.678.269.7950

Sent from mobile device.

On Jul 8, 2019, at 7:56 AM, Jamie Carr <jcarr@pwrplan.com> wrote:

The RFP does not. It includes interfacing ptax to Provision, but not reconfiguration of Provision. Or did I miss something?

Sent from my iPhone

On Jul 8, 2019, at 7:26 AM, Jim Dahlby <jdahlby@pwrplan.com> wrote:

Does or does not have provision

Jim Dahlby

(m) +1.678.269.7950

Sent from mobile device.

On Jul 8, 2019, at 7:25 AM, Jamie Carr <jcarr@pwrplan.com> wrote:

FYI - here's a draft of the AEP RFP. The official release is set for today. You'll see it's worded very generally and if Vadim actually has a product, we could be in for a battle, especially if he partners with someone who had tax accounting experience. However, the RFP doesn't include Provision reconfiguration.

I'll work with Eric, Colin, Rob and Justin on this.

Orals are the week of Aug 5th. Anyone have a conflict?

Sent from my iPhone

Begin forwarded message:

From: Kevin D Keller <kdkeller@aep.com>
Date: July 7, 2019 at 10:31:18 AM EDT
To: Jamie Carr <jcarr@pwrplan.com>
Subject: [EXT] Draft RFP

Exercise CAUTION when opening links or attachments.



Jamie – Just got my hands on the Draft RFP. I do not anticipate any material changes to the doc. The final should be distributed to all vendors tomorrow through the formalized RFP process.

Thanks!

KEVIN D KELLER | DIR TAX ACCTING & FORECASTING
KDKELLER@AEP.COM | D:614.716.1994 | C:614.648.7640
1 RIVERSIDE PLAZA, COLUMBUS, OH 43215

<Tax Fixed Asset System RFP_DRAFT.docx>

Message

From: Jim Dahlby [jdahlby@pwrplan.com]
Sent: 7/25/2019 9:31:22 PM
To: Jamie Carr [jcarr@pwrplan.com]
Subject: Re: Request for Pricing Approval - AEP Services

Thanks for your leadership on this.

Jim

Jim Dahlby

(m) +1.678.269.7950

Sent from mobile device.

On Jul 25, 2019, at 7:55 PM, Jamie Carr <jcarr@pwrplan.com> wrote:

Sent from my iPhone

Begin forwarded message:

From: John Ericson <jericson@pwrplan.com>
Date: July 25, 2019 at 5:49:39 PM EDT
To: Joe Gomes <Joe.Gomes@powerplan.com>, Joost Rutten <Joost.Rutten@powerplan.com>, Brett Bertz <brett.bertz@powerplan.com>, Paul Crist <pcrist@pwrplan.com>
Cc: Matt Crye <mcrye@pwrplan.com>, Jamie Carr <jcarr@pwrplan.com>
Subject: Request for Pricing Approval - AEP Services

Joe, Joost, Brett, Paul,

Matt, Jamie, and me – with input from Jim Dahlby, Phil Zegarelli, and other tax experts have worked this week to review our options and put together a winning strategy for a Tax RFP at AEP.

The details are below, but we feel that keeping the competition out of AEP is very important to our longterm success at AEP from a tax perspective and have priced this services opportunity to accomplish that goal.

Please let us know if this is approved and we will complete the RFP for submission tomorrow.

Thanks,

John...



Account: AEP

SAE: John Ericson, Jamie Carr on point for Services Sales

Request Date: RFP Due July 26, 2019

SF Link: <https://na01.salesforce.com/0060d00001tGQ7s>

Oppy Description: AEP has issued an RFP for Tax Work related to Deferred Tax. They have requested a Fixed Fee bid. It is highly

competitive and we are looking to keep competition out of one of our largest customers.

Close Date: November 2019

Stage 1-5: Phase 3 – Vendor Analysis

BC/E/C: Best Case

License/Cloud Discount Summary (leave blank if not seeking a license discount)

License / Cloud:	Term	Metric	List Price	Target Price	Discount %

No software discounts at this point

License Approver: None

Prof. Services Discount Summary (leave blank if not seeking a services discount)

Services:	T&M Fixed Fee	
	Fixed Fee	

Services Approver: Joe Gomes

- Exec Justification:**
- <!--[if !supportLists]--><!--[endif]-->This is a highly competitive deal with RCC, Vadeem's company, Deloitte, and UI.
 - <!--[if !supportLists]--><!--[endif]-->Vadeem potentially has a TFA product that they will pitch to displace PowerPlan
 - <!--[if !supportLists]--><!--[endif]-->There is a lot of work after this project that will probably go to the selected vendor
 - <!--[if !supportLists]--><!--[endif]-->We recently lost a tax deal at FPL and believe it was on price due to competitive pricing tactics

Supporting Docs Attached: EAC from Deal Review

John Ericson

Office: +1 978-474-0640
 Mobile: +1 617-513-3642
jericson@powerplan.com
PowerPlan.com

<image003.png>

<PowerTax RFP EAC v2.xlsx>

Message

From: Jim Dahlby [jdahlby@pwrplan.com]
Sent: 7/22/2019 1:27:38 PM
To: Brett Bertz [brett.bertz@powerplan.com]
Subject: FW: [EXT] NextEra Tax Depreciation and Deferred Tax Project

Brett,

This is the opportunity we think the Lucasys letter to FPL could impact.

Jim

Jim Dahlby

Mobile: +1 678.269.7950
jdahlby@pwrplan.com

From: Jamie Carr <jcarr@pwrplan.com>
Sent: Friday, July 19, 2019 4:19 PM
To: Kevin Murphy <kmurphy@pwrplan.com>; Matt Crye <mcrye@pwrplan.com>; Phil Zegarelli <pzegarelli@pwrplan.com>; Jim Dahlby <jdahlby@pwrplan.com>; Brett Bertz <brett.bertz@powerplan.com>; Skip Fowler <Skip.Fowler@powerplan.com>; Michael Bradley <mbradley@pwrplan.com>
Subject: Fwd: [EXT] NextEra Tax Depreciation and Deferred Tax Project

FYI

Sent from my iPhone

Begin forwarded message:

From: "Rogers, Phillip" <Phillip.Rogers@fpl.com>
Date: July 19, 2019 at 4:09:03 PM EDT
To: Jamie Carr <jcarr@pwrplan.com>
Subject: RE: [EXT] NextEra Tax Depreciation and Deferred Tax Project

Ultimately, the team selected the lowest price bidder

Phillip

From: Jamie Carr <jcarr@pwrplan.com>
Sent: Friday, July 19, 2019 3:56 PM
To: Rogers, Phillip <Phillip.Rogers@fpl.com>
Subject: Re [EXT] NextEra Tax Depreciation and Deferred Tax Project

CAUTION - EXTERNAL EMAIL

Phillip-

Thanks for getting back to me. What was the deciding factor?

Jamie

Sent from my iPhone



On Jul 19, 2019, at 1:34 PM, Rogers, Phillip <Phillip.Rogers@fpl.com> wrote:

Exercise CAUTION when opening links or attachments.

Jaime:

I apologize for the long delay in getting the answer out, but the team will be moving forward with another company for this project.

Thank you for your professionalism throughout this process.

Phillip

Phillip Rogers
Integrated Supply Chain
Florida Power & Light
Desk: 561-694-3365
Cell: 561-563-2365
phillip.rogers@fpl.com

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Mark S. VanderBroek
T 404.322.6675
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October 30, 2019

Via FedEx and Email

Mr. Vadim Lantukh
Co-Founder and CEO
Mr. Daniel Chang
Co-Founder and COO
Mr. Stephen Strang
Chief Technology Officer
Lucasys, Inc.
1595 Peachtree Parkway
Suite 204-190
Cumming, Georgia 30041

Mr. Vadim Lantukh
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Mr. Stephen Strang
600 Garson Dr. NE, Apt. 5103
Atlanta, Georgia 30324-3387
sgstrang@gmail.com

Re: Lucasys' Misappropriation of PowerPlan Intellectual Property

Dear Messrs. Lantukh, Chang and Strang:

I and this law firm represent PowerPlan, Inc. ("PowerPlan"), a wholly-owned subsidiary of Roper Technologies, Inc. [NYSE: ROP]. This letter addresses the misappropriation by Lucasys, Inc. ("Lucasys") and each of you of PowerPlan's confidential and proprietary information and trade secrets (collectively the "Protected Information"), including but not limited to those embodied by PowerPlan's unique and sophisticated software and data systems and solutions and its confidential customer information, through Lucasys' use of this information to design, develop, market and attempt to sell directly competing Lucasys software to the same group of customers and



Vadim Lantukh
Daniel Chang
Stephen Strang
October 30, 2019
Page 2

potential customers served by PowerPlan. This letter also addresses the impropriety of Lucasys continuing to provide consulting services to PowerPlan customers for PowerPlan software, at the same time Lucasys is developing its own competing software to sell to these and other PowerPlan customers.

A. PowerPlan and Its Proprietary Software and Other Trade Secrets and Confidential Information.

As you know, PowerPlan has, through a substantial expenditure of time, effort, and money over 25 years, developed valuable, unique, and sophisticated software and data systems and solutions. The PowerPlan software permits utilities, and other businesses operating in rate regulated and asset intensive industries, to effectively manage and integrate the financial, operational, and regulatory compliance aspects of their assets. PowerPlan's software platform integrates granular financial data with complex regulatory compliance rules and operational information, to allow decision makers to access meaningful data and make credible and supportable decisions to optimize corporate performance.

PowerPlan's unique and specialized software solutions include nine different software suites or modules, covering the areas of fixed assets, lease accounting, rate case and ROE management, income tax, property tax, capital planning and forecasting, project portfolio cost management, asset investment optimization, and insights analytics and reporting.

PowerPlan's software programs, including source code, system and data architecture, data bases, and various unique and integrated features and functions thereof, are confidential and proprietary and embody trade secrets under federal and Georgia law. These system components derive economic value from not being generally known, and PowerPlan has taken reasonable measures to maintain their secrecy. Similarly, PowerPlan has developed other valuable Protected Information that also amount to trade secrets, including but not limited to customer information relating to its customer base of utility companies and other regulated and asset intensive businesses, and pricing information for its software solutions.

As former employees of PowerPlan, you each know that the measures taken by PowerPlan to maintain the secrecy of its Protected Information include, but are not limited to: (1) requiring PowerPlan employees to sign employment agreements prohibiting use or disclosure of PowerPlan Protected Information outside their employment with PowerPlan; (2) adopting employee handbooks with policies similarly prohibiting use or disclosure of this information outside of employment with PowerPlan; (3) requiring customers to sign license agreements acknowledging PowerPlan's proprietary rights in its software programs, manuals and supporting materials, and

Vadim Lantukh
Daniel Chang
Stephen Strang
October 30, 2019
Page 3

agreeing to maintain the confidentiality of and refrain from disclosing such PowerPlan Protected Information; and (4) requiring user log ins and passwords for employees, customers, and other persons accessing PowerPlan's software.

PowerPlan's unique and sophisticated software and data solutions have enjoyed tremendous success in the marketplace in which PowerPlan operates. The value of PowerPlan's system depends in large part on the confidential and proprietary nature of the software programs, solutions, and related materials, which prevents others from copying protected aspects thereof (including proprietary features and functions) to unfairly compete with PowerPlan.

B. Your Backgrounds as Former PowerPlan Employees and as Consultants Servicing PowerPlan Software.

You each worked for years as PowerPlan employees, including in managerial positions. Some of you have also worked as a consultant providing services to PowerPlan customers in implementing and using PowerPlan software. In those capacities, you have had, and still have, access to a wide spectrum of PowerPlan's Protected Information, under legal obligations to refrain from using or disclosing for purposes unrelated to servicing PowerPlan customers.

Mr. Lantukh was employed by PowerPlan from July 2007 through March 2013 first as Manager of Software Installation and later as Director of Professional Services. In both of those management positions, he had intimate access to all aspects of PowerPlan's confidential and proprietary systems (including but not limited to the system architecture, databases, features, functions, and source code), and worked closely with PowerPlan customers in connection with implementation and use of PowerPlan's software. He also had access to confidential and proprietary PowerPlan customer and pricing information.

Mr. Chang worked for PowerPlan from June 2009 to December 2014, as a consultant assisting customers in implementing and using their PowerPlan software, and later in managerial positions. Mr. Strang worked for PowerPlan from January 2011 to September 2015, as a Senior Consultant assisting customers in implementing and using their PowerPlan software, and later in a managerial position. In those capacities, Chang and Strang had access to a wide spectrum of PowerPlan's Protected Information – including but not limited to PowerPlan software system architecture, databases, features, functions, and source code, and customer and pricing information.

While working for PowerPlan, each of you signed Employment Agreements in which you agreed, among other things, to refrain in perpetuity from using, disclosing, or permitting any unauthorized person from using, disclosing, or gaining access to, any

Vadim Lantukh
Daniel Chang
Stephen Strang
October 30, 2019
Page 4

Protected Information of PowerPlan, except to the limited extent necessary to satisfy your obligations to PowerPlan. In addition, you were and are aware that PowerPlan requires its customers to sign license agreements acknowledging PowerPlan's proprietary rights in its software programs, manuals and supporting materials, and agreeing to maintain the confidentiality of and refrain from disclosing such Protected Information.

From March 2013 through May 2018, Mr. Lantukh worked for Regulated Capital Consultants ("RCC") as a consultant providing services exclusively or primarily to PowerPlan customers in connection with implementation and use of their PowerPlan software, subject to confidentiality obligations owed to the customers, to PowerPlan, and presumably to RCC as well. From 2015 until earlier this year, Mr. Chang worked for Deloitte and consulted with PowerPlan customers in connection with implementation and use of their PowerPlan software, also subject to confidentiality obligations. In those capacities you continued to have access to PowerPlan's proprietary software, and to other PowerPlan Protected Information.

Since Lucasys was formed in May 2018, PowerPlan understands that at least Mr. Lantukh has continued to provide consulting services to some of PowerPlan's customers in connection with their PowerPlan software. Thus, Lucasys and you continue to have access to virtually all aspects of PowerPlan's proprietary software and data structures, subject to confidentiality and non-disclosure obligations, as discussed in more detail below.

C. Your Formation of Lucasys, and Your and Lucasys' Resulting Misappropriation of PowerPlan's Protected Information to Design and Develop Competing Software to Market and Sell to PowerPlan's Customer Base.

In May 2018, Mr. Lantukh (and apparently Mr. Chang) founded and Mr. Lantukh became CEO of Lucasys. Lucasys was formed to develop software solutions and programs comparable to PowerPlan's proprietary software, and to market and sell those solutions and programs to the same core customer base served by PowerPlan – at the same time that Lucasys has continued to consult with PowerPlan customers about PowerPlan's software. Lucasys has been designing and developing its software over the last year, and recently started to market, promote, and seek to sell this software to utilities and other regulated and asset intensive businesses, including to PowerPlan's customers.

Given that most of Mr. Lantukh's professional career has been spent accessing, modifying, implementing, and working with PowerPlan's proprietary software, either as a PowerPlan employee or a consultant servicing PowerPlan customers, PowerPlan was

Vadim Lantukh
Daniel Chang
Stephen Strang
October 30, 2019
Page 5

concerned that it would be impossible for him and Lucasys to design and develop Lucasys' software without inevitably misappropriating confidential and proprietary aspects of PowerPlan's software. This concern was exacerbated when PowerPlan learned that Lucasys recently hired former PowerPlan employees Mr. Chang as Lucasys' COO and Mr. Strang as its Chief Technology Officer, and that Mr. Chang is a co-founder of Lucasys.

PowerPlan just learned that Lucasys has hired a fourth former PowerPlan employee – Vu Nguyen – to become a Lucasys Implementation Partner. Like each of you, while Mr. Nguyen was a PowerPlan employee he had access to and worked closely with PowerPlan's confidential and proprietary systems, including its source code, and worked closely with PowerPlan customers in implementing PowerPlan software. Also like each of you, Nguyen signed employment agreements with PowerPlan prohibiting him from using or disclosing PowerPlan's Protected Information (including computer programs, codes, and documentation and customer information) outside of his employment with PowerPlan. Furthermore, in his position with Integrated Solutions Consulting, Mr. Nguyen has worked as a consultant for one or more PowerPlan customers helping to implement the software.

In addition, earlier this year Mr. Chang attended a PowerPlan user conference while he was still an employee of Deloitte, at which he would have had been exposed to additional proprietary PowerPlan Protected Information. This information was provided subject to and conditioned upon Deloitte's signed agreement, under which Chang is bound, to maintain the confidentiality of PowerPlan product and other Protected Information, and to refrain from disclosing or making such information available to a third party for any reason.

Based on a review of Lucasys' current and evolving website, marketing videos, and other information available to PowerPlan, it now has become apparent that PowerPlan's concerns were justified, and that Lucasys' software inappropriately mimics and imitates PowerPlan's proprietary software programs and solutions. The Lucasys software purports to have many of the same software suites and modules as PowerPlan, and those modules appear to not only provide the same unique and proprietary functions and features as PowerPlan's software, but also to be built using similar proprietary software architecture and databases.

For example, the Lucasys software service modules listed on its website – fixed assets, tax solutions, regulatory solutions, planning and forecasting, intelligence as a service, and copilot finance automation – mirror many of the software service modules provided by PowerPlan. Furthermore, the marketing video illustrating Lucasys' tax solutions software module reflects that the module has the same functions and features as PowerPlan's PowerTax module, and also reflects the same key architectural

Vadim Lantukh
Daniel Chang
Stephen Strang
October 30, 2019
Page 6

components of the PowerTax solution – including methods for tracking book/tax differences, cases structure, allocating book depreciation, and tracking deferred taxes by book to tax differences with different treatments.

Furthermore, Lucasys' software products are being developed for, and are now being marketed and promoted for sale to, the same customer base served by PowerPlan – utilities and other businesses operating in rate regulated and asset intensive industries. Lucasys has a wide range of knowledge of PowerPlan Protected Information relating to these potential customers, as a result of each of your (and Nguyen's) past employment with PowerPlan and consulting engagements for PowerPlan customers who are now potential customers of Lucasys. Lucasys undoubtedly is using this PowerPlan Protected Information in connection with marketing and seeking to sell its competing software to these prospects.

In fact, Lucasys is continuing to provide consulting services to certain PowerPlan customers – including but not limited to Florida Power & Light and AEP – relating to those customers' implementation and use of PowerPlan software. In that capacity, Lucasys continues to have direct access to PowerPlan's confidential and proprietary systems (including source code), under obligations of confidentiality and non-disclosure. At the same time, Lucasys is developing software that competes with and mirrors the architecture, functions, and features of PowerPlan's software solutions and is marketing that software to PowerPlan customers in direct competition with PowerPlan. This creates an intolerable risk to PowerPlan that you and Lucasys will continue to misappropriate PowerPlan Protected Information. It also creates a conflict of interest for Lucasys, because Lucasys has financial incentive for its consulting customers to be dissatisfied with the very software (PowerPlan's) it was retained to help implement.

Finally, Lucasys has been able to develop and begin offering to sell its software solutions within one year of being formed. This is an unusually short development time for software with this level of sophistication and complexity – which further evidences that Lucasys took unfair and illegal shortcuts in development by copying PowerPlan's confidential and proprietary software programs and solutions, and, potentially, portions of PowerPlan's software source code.

These circumstances provide overwhelming proof that Lucasys and each of you individually are improperly, unlawfully, and unfairly using PowerPlan's Protected Information – including but not limited to information embodied in PowerPlan's proprietary architecture, software, data bases, and unique functions and features, and proprietary customer and pricing information – to design, develop, market and sell Lucasys' highly similar and competing software products and solutions to the same customer base. This misconduct amounts to an intentional misappropriation of PowerPlan's trade secrets in violation of the federal Defend Trade Secrets Act, 18

Vadim Lantukh
Daniel Chang
Stephen Strang
October 30, 2019
Page 7

U.S.C. § 1831 *et seq.* and the Georgia Trade Secrets Act, O.C.G.A. § 10-1-760 *et seq.* It also amounts to a breach of each of your contractual obligations owed to PowerPlan to refrain from disclosing or using PowerPlan's Protected Information to or on behalf of third parties such as Lucasys.

To the extent that Lucasys has improperly copied or used portions of PowerPlan's software source code in designing or developing its competing software, then this also would amount to copyright infringement in violation of 17 U.S.C. § 501.

Your and Lucasys' misappropriation of PowerPlan's trade secrets, breaches of confidentiality and non-disclosure agreements, and any copyright infringement, would entitle PowerPlan to a variety of legal remedies. These include but are not limited to an injunction against Lucasys, you, and others acting in concert with Lucasys: (1) prohibiting actual or threatened misappropriation and infringement; (2) prohibiting Lucasys' sale of software developed based on misappropriated trade secrets and/or copied source code, and (3) requiring Lucasys, each of you, and Lucasys employees to return to PowerPlan or destroy all PowerPlan Protected Information or data in their possession, custody or control. 18 U.S.C. § 1836(b)(3)(A); 17 U.S.C. § 502; and O.C.G.A. §§ 10-1-762.

PowerPlan's legal remedies also would include recovery of damages suffered by PowerPlan (which could include but not be limited to lost profits from lost sales); a disgorgement of Lucasys' profits or other unjust enrichment derived from its wrongful conduct; payment of a royalty for Lucasys' unauthorized disclosure or use of PowerPlan's trade secrets; exemplary damages of up to twice the amount of damages or disgorged profits awarded, due to the willful and malicious nature of the misappropriation; and a recovery of attorneys' fees and litigation expenses. See, e.g., 18 U.S.C. § 1836(b)(3)(B)-(D); 17 U.S.C. §§ 504, 505; and O.C.G.A. §§ 10-1-763, 10-1-764.

In addition to Lucasys' wrongdoing mentioned above, Lucasys also has adopted and is using in commerce: (1) a light bulb logo which is similar to a light bulb logo that PowerPlan previously used for many years; and (2) the promotional tagline "complex processes made simple," which is virtually identical to and copied from PowerPlan's previously used taglines "we make the complex simple" and "simplifying the complex." This is likely to cause confusion and deception of potential customers by suggesting that Lucasys has an affiliation or connection with or sponsorship by PowerPlan that does not exist. This amounts to infringement of PowerPlan's prior common law trademark rights in its light bulb logo and tagline, in violation of the federal Trademark Act, 15 U.S.C. § 1125(a) and Georgia common law, and also would entitle PowerPlan to legal relief including an injunction, damages, and a disgorgement of Lucasys' profits. See 15 U.S.C. §§ 1116, 1117. This conduct also serves as further evidence of Lucasys'

Vadim Lantukh
Daniel Chang
Stephen Strang
October 30, 2019
Page 8

intent to copy PowerPlan's intellectual property so as to unfairly compete with PowerPlan, and to freeride on PowerPlan's longstanding goodwill and reputation.

In conclusion, Lucasys and each of you are unfairly and wrongfully competing with PowerPlan in numerous ways: by misappropriating PowerPlan's Protected Information that PowerPlan has spent decades and tens of millions of dollars developing and protecting; misusing this information to develop competing software for Lucasys containing the same or extremely similar proprietary functions, features, architecture, and data bases as PowerPlan's software, wrongfully marketing and selling that software to PowerPlan customers based on PowerPlan's confidential and proprietary customer and pricing information; and using a logo and tagline copied from PowerPlan's so as to further improperly suggest an affiliation with PowerPlan and freeride on PowerPlan's goodwill.

D. PowerPlan's Demands

PowerPlan's Protected Information and other intellectual property are extremely important to it and to its business. It will take all steps necessary to protect this information. PowerPlan cannot allow you and Lucasys to copy, misappropriate, and freeride on this information and intellectual property, by using it to develop a competing software platform to market and sell to the same customer base serviced by PowerPlan. Nor can it permit you and Lucasys to continue to provide consulting services to PowerPlan customers regarding PowerPlan software, with virtually unlimited access to the PowerPlan software, at the same time Lucasys is developing competing software to sell to the same customers in direct competition with PowerPlan.

Accordingly, on behalf of PowerPlan I hereby demand that Lucasys, each of you, and all others acting in concert with Lucasys and/or you (including but not limited to Mr. Nguyen, other Lucasys employees, and any and all persons or entities who own an interest in or are working with Lucasys in relation to its development and sale of its software), comply immediately with each of the following steps:

1. Cease and desist from all disclosure and use of any PowerPlan Protected Information, including but not limited to PowerPlan's software and data systems, solutions, and source code;
2. Make arrangements (coordinated through this law firm before taking any steps to implement) to (a) return to PowerPlan all non-public information and documents (including electronic files, software, and software source code) in your or Lucasys' possession, custody or control that relate to PowerPlan or to PowerPlan's software and customers, and (b) delete and destroy all such information and documents from your computers and other devices;

Vadim Lantukh
Daniel Chang
Stephen Strang
October 30, 2019
Page 9

3. Cease and desist with further design, development, marketing, sales, or efforts to sell Lucasys software, including marketing and promoting at trade shows and industry events, unless and until Lucasys can prove to PowerPlan that its software has been and is being independently designed and developed without any use of PowerPlan's Protected Information, and can be sold to customers without use of PowerPlan's proprietary customer information;
4. Cease and desist from serving as a consultant to PowerPlan customers in any capacity which requires or permits Lucasys to have access to PowerPlan's software or data bases, for as long as Lucasys is developing and selling competing software, and cooperate with these customers in transitioning this consulting work to other persons or businesses. PowerPlan has no objection to Lucasys continuing to provide consulting services to PowerPlan customers that do not involve working with PowerPlan software; and
5. Cease and desist from using a light bulb logo and the slogan or tagline 'complex processes made simple,' and any confusingly similar slogans or taglines.

To preserve and prevent spoliation of information and documents relevant to PowerPlan's claims against you and Lucasys, I further demand that Lucasys, each of you, and all others acting in concert with Lucasys or you (including but not limited to Nguyen, other Lucasys employees, and others who own an interest with or are working with Lucasys in relation to its development and sale of its software) put a litigation hold in place and take all necessary steps to preserve and retain, and to avoid deleting, destroying, altering, or overwriting, all documents, records, and electronically stored information ("ESI") in their possession, custody or control which refer or relate to or evidence any of the practices and conduct referenced in this letter. This includes but is not limited to maintaining and preserving all documents and ESI, whether in the possession or control of Lucasys or any of you personally, consisting of or relating or referring in any manner to any of the following: (1) PowerPlan's software, or any portions of or source code for this software, and all manuals and other materials relating thereto; (2) PowerPlan's customers; (3) PowerPlan's pricing for its software; (4) Lucasys' design and development of its software; (5) Lucasys' promotion, pricing, and sale of, and efforts to sell, its software, including but not limited to communications with customers and potential customers for the Lucasys software; and (6) Lucasys' consulting services provided for PowerPlan customers relating to PowerPlan software. Any destruction, deletion, or alteration of such materials, other than pursuant to an agreement with PowerPlan, will be considered spoliation of relevant evidence.

Vadim Lantukh
Daniel Chang
Stephen Strang
October 30, 2019
Page 10

Please contact me, or have your lawyer contact me, by no later than November 11, 2019, to advise whether and to what extent Lucasys and you have complied and will comply with the demands made herein. If you do not timely comply with these demands, PowerPlan will take all appropriate steps to protect its rights. This could include but not be limited to filing a lawsuit against Lucasys and each of you, which would seek all available equitable and legal remedies.

This letter is sent without waiver of any of PowerPlan's rights, claims and remedies against Lucasys and you, all of which are expressly reserved.

PLEASE BE GOVERNED ACCORDINGLY.

Very truly yours,



Mark S. VanderBroek

MSV:jh

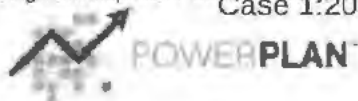
Cc: Mr. Joost Rutten, CFO
Jonathan Sucher, Esq., PowerPlan Senior Corporate Counsel

EXHIBIT 2



DocuSign Envelope ID: FE6372A1-2133-4B00-B92B-7E2D05AC1327

Case 1:20-cv-02987-AT Document 18-3 Filed 09/11/20 Page 2 of 2



December 5, 2019

VIA EMAIL

American Electric Power Service Corporation

ATTN: Jeffrey W Hoersdig <jwhoersdig@aep.com>; James X Llende <jxllende@aep.com>; Kevin D Keller <kdkeller@aep.com>; Chris B Morris <cbmorris@aep.com>; Anthony J Swaneck <ajswaneck@aep.com>; Julie E Sanders <jesanders2@aep.com>

RE: Protecting PowerPlan Proprietary Software and Intellectual Property Rights

Messrs. Hoersdig, Llende, Keller, Morris, Swaneck, and Ms. Sanders:

At PowerPlan, one of our most valuable assets is our intellectual property. This intellectual property includes the confidential and proprietary information and trade secrets embodied within our unique and sophisticated software solutions, including the source code, system and database architecture, databases, database models and structures, and various unique and integrated features and functions thereof. To protect and preserve these rights, we take reasonable steps to maintain the confidentiality of our software programs and solutions.

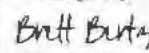
You may be aware that we include confidentiality provisions in our software license agreements with our customers. For example, the PowerPlant System Perpetual Licensing Agreement (the "License Agreement") between our companies includes provisions in Article 14 in which AEP acknowledges PowerPlan's proprietary rights in and to its software, including computer programs, manuals and supporting materials, and agrees to maintain the confidentiality of this information by refraining from using, disclosing, publishing or divulging the information to any third-party without our consent, and by employing no less stringent procedures than the strictest procedures used to protect its own confidential data.

We understand that you utilize third-parties to perform services related to our software from time to time. Nevertheless, please be advised that continued or future use of such third-parties will require our consent in compliance with the License Agreement. It is our understanding that one such third-party used by you to perform this consulting work on the PowerPlan software is Lucasys Inc. It is PowerPlan's understanding that Lucasys has been developing software that directly competes with our software, and recently started marketing and seeking to sell that software to our customer base. As I am sure you can understand, to protect our trade secrets and other intellectual property, we cannot permit Lucasys to have access to our confidential and proprietary software through our customers while Lucasys simultaneously develops, markets, and sells the same kind of software to the same customer base in direct competition with us. This creates an intolerable risk for us – and you – that Lucasys may continue or begin to misuse or misappropriate our confidential information and trade secrets and unfairly use them to develop, market, and sell its competing software.

Accordingly, this confirms our expectation that AEP and its affiliates will cease providing Lucasys with access to our software and aforementioned intellectual property, including the database architecture and data model. Further, we ask that you notify us of any other third parties that currently have access through AEP to the PowerPlan software and associated database, via database link or otherwise, and (whether monitored, managed, or logged by you), and of the confidentiality arrangement you have in place with such parties. This will allow us to determine whether our intellectual property is sufficiently protected, while continuing to partner with you to minimize disruption to your strategic PowerPlan software-related initiatives.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

DocuSigned by:

 3FAF2E92A3B54A9

Brett Bertz

Chief Customer Officer

Cc: Jim Dahlby, VP of Strategy
 Jonathan Sucher, Senior Corporate Counsel

Message

From: Jim Dahlby [jdahlby@pwrplan.com]
Sent: 2/26/2020 10:32:08 PM
To: Joost Rutten [Joost.Rutten@powerplan.com]
Subject: FW: AEP

Do we want to discuss in tomorrow?

Jim Dahlby

Mobile: +1 678.269.7950
 jdahlby@pwrplan.com

From: Brett Bertz <brett.bertz@powerplan.com>
Sent: Thursday, February 20, 2020 10:34 AM
To: Jim Dahlby <jdahlby@pwrplan.com>; Joost Rutten <Joost.Rutten@powerplan.com>
Subject: RE: AEP

I do. He's included on my previous note. I'll ping him.

From: Jim Dahlby <jdahlby@pwrplan.com>
Sent: Thursday, February 20, 2020 10:31 AM
To: Brett Bertz <brett.bertz@powerplan.com>; Joost Rutten <Joost.Rutten@powerplan.com>
Subject: RE: AEP

John Ericson has a conversation with Jeff today, do we want John to bring it up.

Jim Dahlby

Mobile: +1 678.269.7950
 jdahlby@pwrplan.com

From: Brett Bertz <brett.bertz@powerplan.com>
Sent: Thursday, February 20, 2020 10:28 AM
To: Joost Rutten <Joost.Rutten@powerplan.com>; Jim Dahlby <jdahlby@pwrplan.com>
Subject: AEP

FYI – Jeff is very difficult to get a response from. I do not have confirmation from him that the third party no longer has access to our IP at AEP. And, we have reason to be concerned as AEP's VP of Tax was very vocal with me at the AGA-EEI Tax Leadership meeting in November about his support of technology disruption in the markets that we serve.

From: Brett Bertz
Sent: Thursday, February 20, 2020 10:21 AM
To: 'Jeffrey W Hoersdig' <jwhoersdig@aep.com>
Cc: John Ericson <jericson@pwrplan.com>
Subject: RE: PowerPlan Executive Advisory Board - 2020

Jeff, following up on my previous note. Do you have any feedback from Jimmy on our EAB? Also, I'd like to confirm the intellectual property access request.

Thanks for your assistance.

BB



From: Brett Bertz
Sent: Wednesday, February 12, 2020 8:14 AM
To: Jeffrey W Hoersdig <jwhoersdig@aep.com>
Cc: John Ericson <jericson@pwrplan.com>
Subject: RE: PowerPlan Executive Advisory Board - 2020

Jeff, just following up on my note from last week. Two items to confirm:

1. Have you had feedback from Jimmy Llende on his ability to represent AEP at the June EAB meeting?
2. Have you been able to confirm that we have removed the access of the third party we discussed to PowerPlan intellectual property?

Thanks and please let me know if you have any questions.

BB

From: Brett Bertz
Sent: Thursday, February 6, 2020 3:23 PM
To: Jeffrey W Hoersdig <jwhoersdig@aep.com>
Cc: John Ericson <jericson@pwrplan.com>
Subject: PowerPlan Executive Advisory Board - 2020

Jeff, good to catch up this afternoon. As discussed here is some additional detail on our 2020 Executive Advisory Board event:

- Location: Scottsdale, AZ
- Four Seasons Resort at Troon North
- Monday, June 22nd – Wednesday, June 24th
 - Kick off Monday with an activity of your choosing (Golf at Troon North Monument Course, Spa at Four Seasons or Jeep Tour to enjoy sights and sounds of desert area)
 - Lake Wilson will follow up with you to confirm all details and get your preferred activity
 - Welcome reception on Monday evening
 - Meeting all day Tuesday followed by a dinner that evening
 - Breakfast and departure Wednesday morning
- Spouses or significant others are welcome and encouraged to attend. They are invited to join our activities on Monday as well as any meals or receptions and we will have a shopping outing for them on Tuesday while we are meeting.

I understand that you have another commitment during that week in June. We would welcome the participation of Jimmy Llende representing AEP if his schedule will support it.

I will synch back up with John on establishing a time that Joe Gomes and I can be in person at AEP to deliver a deeper review of PowerPlan's new strategy to become the standard for the way the office of the CFO within the energy industry solves the most complex problems their companies face.

Lastly, I'll look to hear from you over the next 2 weeks to establish a follow up on the 3rd party access to PowerPlan intellectual property at AEP.

Thanks again for your continued investment with PowerPlan. Let me know if I can ever help you.

Brett M. Bertz

Office: +1 678.223.2762
Mobile: +1 678.643.2242

brett.beritz@powerplan.com
PowerPlan.com



PLAN

DEC. 4, 2019

**AGREED PROCESS FOR INFORMATION EXCHANGE AND DISPUTE RESOLUTION
BETWEEN POWERPLAN, INC. AND LUCASYS, INC. AND ITS PRINCIPALS**

Introduction and Background

PowerPlan, Inc. ("PowerPlan") has sent a letter to Lucasys, Inc. ("Lucasys") and its principals, Vadim Lantukh ("Lantukh"), Daniel Chang ("Chang"), and Stephen Strang ("Strang") (collectively the "Lucasys Parties," and with Lantukh, Chang, and Strang collectively referred to as the "Lucasys Individuals"), accusing the Lucasys Parties of misappropriation of PowerPlan's confidential and proprietary information and trade secrets (the "Protected Information"), including Protected Information relating to PowerPlan's software products and solutions (the "PowerPlan Software"), customers, and pricing, in connection with Lucasys' development, marketing and sale of software (the "Lucasys Software" further defined herein). The Lucasys Parties have responded to that letter, and deny PowerPlan's contentions.

In an effort to resolve this dispute without litigation, PowerPlan and the Lucasys Parties (collectively the "Parties") have agreed upon the general parameters of a process and associated conditions, as set forth in this document (the "Agreed Process"), for permitting PowerPlan to inspect and review the Lucasys Software (including architecture, databases, and source code) and development documents, and to obtain additional information and documents from Lucasys, in an expeditious manner and for the purpose of analyzing and comparing the parties' respective software products and thereafter discussing and seeking to resolve disputed issues between the parties.

The Agreed Process and Conditions

A. Process for permitting PowerPlan inspection of Lucasys Software and exchange and review of other information and documents.

1. PowerPlan representatives involved in inspection of Lucasys Software and review of related materials: The Parties agree that the following PowerPlan officers, employees and representatives will be permitted to have access to, review, inspect and discuss Lucasys Software (as defined below), including code and databases, and other confidential or highly confidential documents and information provided by Lucasys during this process, subject to the terms of a confidentiality and non-disclosure agreement ("Confidentiality Agreement") to be negotiated in good faith between the Parties: Jim Dahlby, PowerPlan Vice President; Jonathan Sucher, PowerPlan Senior Corporate Counsel, PowerPlan's outside counsel at Nelson Mullins Riley & Scarborough (Mark VanderBroek, Lloyd Farr, and Peter Munk), and PowerPlan's third party software experts Sylvan Advisory & Consulting, LLC (Paul Pinto, Lou Brink, and Scott Robinson).

a. "Lucasys Software" shall mean any software that Lucasys has developed or is in the process of developing, and at a minimum shall include but not be limited to the software modules, suites, applications, or solutions identified on the "Solutions" page of Lucasys' website:



- iii. Access to the actual, or a copy of, the Product Development Life Cycle Management (PDLCM) tool used by Lucasys to manage the development of its applications.

d. The Lucasys Software copies and other documents and information exchanged by and between the Parties will be subject to confidentiality/non-disclosure obligations set forth in the Confidentiality Agreement. The PowerPlan representatives listed in Section A.1 of this Agreed Process will have access to the Lucasys Software and Lucasys documents subject to the Confidentiality Agreement. In addition, PowerPlan may share with PowerPlan management and with Roper IP counsel high level general comments and summaries based on its representatives' review and analysis of the Lucasys Software and Lucasys documents, as long as the details of the Lucasys Completing Software, or other information or highly confidential materials are not shared beyond the persons permitted access to that. Any individual or entity with whom PowerPlan shares information that it obtained under this agreement (even if by general comments or summary) must execute the Confidentiality Agreement. Non-public Information shared by PowerPlan with Lucasys during this process, if any, shall also be treated as confidential by the Lucasys Parties under the Confidentiality Agreement.

B. **Dispute Resolution Process.** After PowerPlan completes its review and inspection of Lucasys' Software, it is the current intention of the Parties to schedule a settlement meeting or mediation during January to seek to discuss and resolve disputes between the Parties.

C. **Other Conditions to This Process.**

1. The Parties agree that in order to encourage good faith participation in the processes set forth in this Agreed Process, all delays in any party's filing of a complaint or motion to seek expedited relief or discovery after November 11, 2019 will not be used by the opposing party(ies) to argue that the filing party has delayed or waited too long to seek a preliminary injunction or other form of expedited relief (including expedited discovery).

2. While this process is underway and unless and until the process is terminated by either party:

a. Lucasys will temporarily suspend its marketing of and efforts to sell Lucasys Software to any new customers who use PowerPlan's software, but will be permitted to follow up on existing opportunities to sell Lucasys Software (including ones for which a bid is already submitted), and will be permitted to continue to maintain the status quo of its website and the two currently existing promotional videos as long as it doesn't add more videos or actively market or try to sell competing software other than as permitted in this subparagraph; and

b. PowerPlan will temporarily refrain from discussing concerns about Lucasys' development, marketing and sale of competing software or misappropriating PowerPlan proprietary information with PowerPlan customers that are using Lucasys as consultants for their PowerPlan software (with the exception of NextEra and AEP and their affiliates, with whom PowerPlan may continue to have such discussions).

NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Nondisclosure and Confidentiality Agreement (this "**Agreement**"), effective December 11, 2019 (the "**Effective Date**"), is entered into by and between Lucasys Inc., a company having its principal office at 1595 Peachtree Parkway, Suite 204-190, Cumming, GA 30041 ("**Company**") and PowerPlan, Inc., a company having its principal office at 300 Galleria Parkway, Suite 2100, Atlanta, GA 30339 ("**PowerPlan**") (each herein referred to individually as a "**Party**," or collectively as the "**Parties**"). In consideration of the covenants and conditions contained herein, the Parties hereby agree to the following:

1. PURPOSE

Company and PowerPlan have agreed upon the general parameters of a process and associated conditions to share certain information, as set forth in the Agreed Process For Information Exchange And Dispute Resolution Between PowerPlan, Inc. and Lucasys, Inc. and Its Principals dated December 4, 2019 (the "**Agreed Process**"), including Company software code and databases, and other confidential or highly confidential documents and information provided by Company during this process, subject to the terms of this Agreement. In connection with the Agreed Process, the Company will share certain confidential information with certain PowerPlan officers, employees, and representatives (the following individuals are the only people that may review confidential information subject to this Agreement and the Agreed Process: Jim Dahlby, Jonathan Sucher, Mark VanderBroek, Lloyd Farr, Peter Munk, Paul Pinto, Lou Brink, and Scott Robinson). Any recipient of information pursuant to the Agreed Process shall be deemed a "**Recipient**" for purposes of this Agreement. The Parties agree that such information shall be maintained as confidential in accordance with the terms of this Agreement, and shall not be disclosed except as expressly permitted herein.

2. CONFIDENTIAL INFORMATION

A. *Definition.* "**Confidential Information**" means any non-public Company information disclosed to Recipient during the dispute resolution process provided for in the Agreed Process, including any such information disclosed prior to the Effective Date, either directly or indirectly in writing, orally or by inspection of tangible objects (including, without limitation, financial information, research, product plans, products, services, equipment, customers, markets, software, inventions, processes, designs, drawings, hardware configuration information, marketing and finance documents, prototypes, samples, and data sets), whether or not designated as "confidential" at the time of disclosure. Confidential Information may also include information of a third party that is in Company's possession and is disclosed to Recipient under this Agreement and as part of the Agreed Process.

B. *Exceptions.* Confidential Information shall not, however, include any information that PowerPlan or Recipient can establish (i) was publicly known or made generally available without a duty of confidentiality prior to the time of disclosure to Recipient; (ii) becomes publicly known or made generally available without a duty of confidentiality after disclosure to Recipient through no action or inaction of Recipient; (iii) is in the rightful possession of PowerPlan or Recipient without confidentiality obligations at the time of disclosure to Recipient as shown by PowerPlan's or Recipient's then-contemporaneous written files and records kept in the original



permitted by the Agreed Process. Nothing in this Agreement shall be construed to restrict Company's use or disclosure of its own Confidential Information.

6. **RETURN OF MATERIALS**

All documents and other tangible objects containing or representing Confidential Information and all copies or extracts thereof or notes derived therefrom that are in the possession or control of Recipient shall be and remain the property of Company. Upon termination or expiration of the Agreed Process: (a) if the Parties have resolved all of their disputes, all Confidential Information provided to Recipients shall be returned to the Company or destroyed, at the option of the Company; and (b) if the Parties have not resolved all of their disputes, the Recipients may retain possession of all Confidential Information, including any Lucasys Software in the possession of PowerPlan's expert Recipients, for thirty (30) days, and, if a lawsuit between the Parties is filed within those 30 days, for as long as the lawsuit is pending; provided, that the obligations set forth in this Agreement shall continue to apply unless and until there is a Confidentiality or Protective Order entered as part of a lawsuit that supersedes this Agreement; and provided, further, that if a lawsuit is not filed within 30 days of termination or expiration of the Agreed Process all Confidential Information provided to Recipients shall be returned to the Company or destroyed, at the option of the Company.

7. **NO LICENSE**

Nothing in this Agreement is intended to grant any rights to Recipient under any intellectual property right of Company, nor shall this Agreement grant Recipient any rights in or to the Confidential Information except as expressly set forth in this Agreement or in the Agreed Process.

8. **REMEDIES**

Recipient agrees that any violation or threatened violation of this Agreement will cause irreparable injury to Company, entitling Company to seek injunctive relief in addition to all legal remedies without showing or proving any actual damage and without any bond required to be posted.

9. **RECIPIENT INFORMATION**

Company does not wish to receive any confidential information belonging to PowerPlan, and Company assumes no obligation, either expressed or implied, with respect to any information disclosed by Recipient to Company.

10. **MISCELLANEOUS**

This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns; except that Recipient may not assign or otherwise transfer this Agreement, by operation of law or otherwise, without written consent of Company. Any assignment or transfer of this Agreement in violation of the foregoing shall be null and void. This Agreement will be interpreted and construed in accordance with the laws of the State of Georgia.

EXHIBIT A**COMMITMENT OF RECIPIENT PURSUANT TO NONDISCLOSURE AND
CONFIDENTIALITY AGREEMENT REGARDING CONFIDENTIAL INFORMATION**

I hereby affirm my understanding (i) that Confidential Information is being provided to me pursuant to the terms and restrictions of the Nondisclosure and Confidentiality Agreement (the "Agreement") entered between Lucasys Inc and PowerPlan, Inc and (ii) that I have read the Agreement. I understand the terms of the Agreement. **I agree to be bound by the Agreement as though I am a party to the Agreement.**

Name: Jonathan Sucher

Job Title: Senior Corporate Counsel

Employer: PowerPlan, Inc.

Business Address:

300 Galleria Pkwy, Ste 2100

Atlanta, GA 30339

Date: December 12, 2019

DocuSigned by:

Jonathan Sucher

E026E750AC72478

Signature

EXHIBIT A

COMMITMENT OF RECIPIENT PURSUANT TO NONDISCLOSURE AND
CONFIDENTIALITY AGREEMENT REGARDING CONFIDENTIAL INFORMATION

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Name: Mark VanderBroek

Job Title: Partner

Employer: Nelson Mullins

Business Address:

201 17th St. N.W.

Suite 1700

Atlanta, GA 30363

Date: Dec. 12, 2019

Mark VanderBroek
Signature



Mark S. VanderBroek
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March 9, 2020

Via Email and Overnight Courier

Jason S. Alloy, Esq.
Joseph Saul, Esq.
Robbins Ross Alloy Belinfante Littlefield LLC
500 14th Street, NW
Atlanta, Georgia 30318

Re: PowerPlan, Inc. ("PowerPlan") v. Lucasys, Inc. ("Lucasys") *et al.*
PowerPlan's Summary Findings from Investigation of Lucasys Software
Development and Business Plans under Agreed Process

Dear Jason and Joseph:

To follow up on our phone call today, this letter provides summary level findings from PowerPlan's preliminary investigation and analysis of Lucasys software, documents and information produced pursuant to the December 4, 2019 Agreed Process for Information Exchange and Dispute Resolution between PowerPlan and Lucasys (the "Agreed Process"). These findings confirm that Lucasys and its principals are misappropriating and misusing certain PowerPlan trade secrets and proprietary information, including PowerPlan's proprietary database structure and model, in connection with its development of Lucasys software solutions for marketing and sale to PowerPlan customers.

This letter includes citations to various documents, code, and other information provided by Lucasys through the Agreed Process, as examples of evidence supporting PowerPlan's findings. The letter closes with a reiteration of demands that Lucasys cease and desist from all use of PowerPlan trade secrets and proprietary information in connection with its development, marketing and sale of software, and with a suggestion that the parties promptly explore options for voluntary resolution of claims and disputes between them.

A. Lucasys' Business Model is to Develop Software Modules to Compete with PowerPlan and to Integrate Directly with PowerPlan's Proprietary Databases

It is undisputed that Lucasys has detailed knowledge of and access to PowerPlan's proprietary software. Through prior employment with PowerPlan and consulting for PowerPlan



Jason Alloy, Esq.
 Joseph Saul, Esq.
 March 9, 2020
 Page 2

customers, Lucasys' principals have detailed knowledge about PowerPlan's confidential and proprietary software, including the proprietary PowerPlan physical database, table layouts, database schema, and data models. Further, Lucasys has continuing access to PowerPlan's software, including source code, databases, and documentation, through its consulting engagements with PowerPlan customers.

Lucasys' business model is to: (1) provide consulting services to help PowerPlan customers' implement and use PowerPlan software; and (2) develop individual software modules, one of which is complementary to PowerPlan's software (*e.g.*, CoPilot) and others of which are competitive (*e.g.*, Deferred Tax module), to market and sell to PowerPlan's customers and other potential customers.

- L0299 - "we offer both *overlapping* and complementary products to PowerPlan in the areas of tax, fixed assets, budgeting and forecasting, and regulatory software solutions." (Emphasis added)
- L0318 - "Lucasys Tax (replacement for PowerTax)"

Lucasys is in the early stages of development of its CoPilot and Deferred Tax software modules. It also plans to develop other software modules that will compete with PowerPlan's software (*e.g.*, in the areas of tax, fixed assets, regulatory solutions, and planning and forecasting, as identified on its website). Lucasys intends to use CoPilot to get its "toe in the door" with PowerPlan customers, and then provide competing Lucasys modules to replace PowerPlan modules.

- I 0240 - "this is a way to come in with a 'light' footprint and take over calculations over time. Basically, getting a toe in the door without throwing up a bunch of alarm bells. Avoiding the upfront resistance to swapping out PowerTax altogether, but leaving that as an option over the long term."
- L0285 - the Copilot software service would "automate the workflow in utility's existing systems rather than replace them. . . . This solution is supposed to help utilities which have been working with PowerPlan but still face some issues of its usage. Such add-on should help replace PowerPlan with our main solution in the future."
- L0388-89 - describing goals to develop deferred tax module in 6 months, and in 2 years develop a "full fixed-asset [sic] solution (would include cost tracking, accounting, tax, forecasting)"

To accomplish this plan, Lucasys' software development model is to develop software modules that will integrate and work along with customers' existing PowerPlan software, by accessing, retrieving, and exporting data from customers' PowerPlan databases, running various calculations, studies and/or reports through the Lucasys software, and then importing data back into the customers' PowerPlan databases as applicable. In other words, Lucasys is not developing software intended to work independently from PowerPlan's software. Instead, it is developing and marketing its software as modules that customers can use along with the

Jason Alloy, Esq.
Joseph Saul, Esq.
March 9, 2020
Page 3

customers' existing suite of PowerPlan software modules and proprietary PowerPlan databases, either as a complement to PowerPlan's software (CoPilot) or as a replacement for a PowerPlan module or component while the customer continues using other PowerPlan modules.

- L0264 – Lantukh mentions that a customer is looking for a “system integration document showing Lucasys Deferred Tax and Lucasys Copilot would sit between their existing systems (PowerPlan, PowerTax, PeopleSoft, and ONESOURCE).”

- L0268 – “Lucasys Tax: software that replaces PowerTax and plays nicely with other PowerPlan products.”

Lucasys' software code is written in programming languages different from that of PowerPlan's code. But Lucasys uses an Oracle database to align with the PowerPlan database technology used by target customers. Furthermore, Lucasys is developing its software modules and programs to integrate directly with PowerPlan's proprietary databases, to permit the Lucasys modules to access, retrieve, and export particular data from such databases, manipulate the data, and import back into the PowerPlan databases as applicable.

- L0002 – Lucasys data “will reside in an Oracle database so as to align with the technologies in use at target customers” – which is predominantly PowerPlan. At our meeting with Lucasys, Lucasys admitted using Oracle as the database for its software for ease of integration with PowerPlan's Oracle databases because so many customers use PowerPlan.

- L0815 – Lucasys Data Integration Strategy. Lucasys provides “innovative technology with the ability to integrate with other software providers and databases.” Under the heading “Direct Database Connections (SQL),” Lucasys explains that a “direct connection can be established between Lucasys and a customer's target database to perform data retrievals or updates”

- L0821 – Lucasys' “system architecture is built to optimize the processes and workflows of its customers by allowing direct integration with customer target databases from other products in the industry.”

B. Lucasys' Misappropriation of PowerPlan's Trade Secrets and Other Proprietary Information

PowerPlan's investigation and findings identified at least the following three areas in which Lucasys is and/or will be misappropriating PowerPlan trade secrets, and/or otherwise misusing PowerPlan's proprietary information, in connection with its development and planned development of software.

Jason Alloy, Esq.
 Joseph Saul, Esq.
 March 9, 2020
 Page 4

1. **Misappropriation of Trade Secrets in PowerPlan's Proprietary Database Model and Schema in connection with Lucasys' Development of Software Modules that Integrate with PowerPlan Databases to Access, Retrieve and Export Data From, and Import Data Back to, the PowerPlan Databases.**

Lucasys' business model is to develop software modules which will be integrated and used along with PowerPlan software, and which will access, export, and import data in, from and to customers' PowerPlan's databases. There is no available application programming interface to permit Lucasys to design its modules to integrate with PowerPlan's software and databases without using its knowledge of PowerPlan's proprietary database model. As a result, Lucasys is required to use its detailed knowledge of PowerPlan's proprietary database architecture, model, and schema to develop the integration between the Lucasys modules and PowerPlan databases, and to access, retrieve, and move data between the PowerPlan databases and the Lucasys software. Lucasys' knowledge of PowerPlan's proprietary database model and schema is necessary to: (1) know how and where to access the data from a PowerPlan database needed for the Lucasys software processes, (2) write SQL commands to retrieve that particular data from specified locations and tables in a PowerPlan database and export it to the Lucasys software, and (3) import data back into the PowerPlan database as applicable after Lucasys' calculations and processes are completed.

The documents and information produced by Lucasys to date confirm that Lucasys' CoPilot and Deferred Tax software modules both will require the accessing, retrieving, and exporting of extensive data from PowerPlan's proprietary database tables, and that the CoPilot module also will involve pushing data back into PowerPlan databases.

- L0020-28 CoPilot - PowerTax Business Process Automation summary, L0831-837 CoPilot wireframes, 0856-0937 CoPilot Process Library wireframes, and L0938-943 CoPilot videos, all depict data being retrieved from PowerTax databases and exported to the Lucasys program, manipulated to perform certain additional calculations, functions, or business processes, and then pushed back into PowerTax. These CoPilot processes would require accessing, retrieval, and exporting of substantial amounts of data from various locations in the proprietary PowerPlan database model.

- L0839, 0844 CoPilot process summaries include instructions to "Select the PowerTax case and load activity from PowerPlan," and queries to retrieve various data from PowerTax.

- L0225 – Deferred Tax Module Use Case Summary includes the requirement to "load source transactional data from PowerPlan software and/or template. There will be two separate loads: book data and tax data."

- Lucasys Deferred Tax Code includes instructions to "Update 'tax base activity' from source system (PowerPlan). For POC, make these updates manually (if any)." This is from lines 1598-1604 from the procedure, calculate_basis summary, and from lines 3624-3630 from the procedure, update_data.

Jason Alloy, Esq.
 Joseph Saul, Esq.
 March 9, 2020
 Page 5

Furthermore, this form of Lucasys misappropriation of PowerPlan's proprietary database model information will continue to occur as Lucasys develops additional software modules to be integrated and work along with PowerPlan's software and databases. Under Lucasys' current business model, each of these modules will need to integrate and work along with customers' PowerPlan databases by accessing, retrieving, exporting, and importing various data from and to the PowerPlan databases. Lucasys can only accomplish this integration through its knowledge and use of PowerPlan's trade secrets and proprietary information.

2. Lucasys' ARAM Calc Marketing Tool Has Copied Certain PowerPlan Database Table Headings and Structures.

The database for Lucasys' ARAM Calc software marketing tool (accessible on Lucasys' website) includes at least two tables that strongly correlate with and derive from tables in PowerPlan's database structure. These tables include virtually identical column heading names and associated data. For each of these columns, the only difference in the column name is that, for the PowerPlan tables, the words or abbreviations that comprise the column names are separated by underscores, whereas for the ARAM Calc tables, the same words or abbreviations that comprise the column names are connected without any separating character. For example, the ARAM Calc column, AccumReserveEnd, corresponds to the PowerPlan column, ACCUM_RESERVE_END.

The attachment to this letter includes two tables that map the virtually identical correlation between columns in the Lucasys ARAM Calc tables aram_cal_tax_depreciation and aram_cal_book_depr_rates, and tables and columns in the PowerPlan database. This reflects that Lucasys directly copied these portions of the proprietary PowerPlan database model, amounting to both a misappropriation of trade secrets and copyright infringement.

3. Lucasys' Deferred Tax Module Also Has Copied or Imitated PowerPlan Database Table Headings and Structures, and Misappropriates Unique and Proprietary Features and Components of PowerPlan's PowerTax Software.

Lucasys' Deferred Tax module is in an early stage of proof of concept development, which makes it difficult to compare with comparable portions of PowerPlan's PowerTax software with which Lucasys' module is intended to compete. However, this early version improperly imitates portions of PowerPlan's database table headings and structures and misappropriates certain unique and proprietary features and components of the PowerTax data models.

First, like the ARAM Calc tool, the database model for Lucasys' Deferred Tax module also includes at least three tables that correlate with and derive from analogous tables and columns within PowerPlan's database model. The attachment to this letter maps the correlation between columns in Lucasys Tax (DT_JURISDICTION_RATE, DT_RECORD_BASIS, and DT-RECORD) and analogous tables and columns from PowerPlan's database model. Although

Jason Alloy, Esq.
Joseph Saul, Esq.
March 9, 2020
Page 6

the correlation is not as close as with the ARAM Calc tables, this copying and imitation of portions of PowerPlan's proprietary database table headings and structures amounts to a misappropriation of trade secrets and copyright infringement.

Second, Lucasys appears to have developed its data model for its Deferred Tax Module without much, if any, of the type of development processes and analysis that would be expected if the model was being developed from scratch – such as development of business requirements, leading to functional design specifications and statements of business rules, which then evolve into a data model. Instead, based on its knowledge of PowerPlan's proprietary database model and its intent to market and sell its competing Deferred Tax module to PowerPlan customers, Lucasys appears to have simply adopted a database model that includes a number of unique and proprietary features and components of PowerPlan's PowerTax database model, without considering other ways that it could have developed its model without misappropriating these components. (*See, e.g.*, L0214-15.)

The unique PowerTax features and components (which, to PowerPlan's knowledge, are not available on other tax depreciation software) contained in Lucasys' data models include but may not be limited to the following:

(a) Advanced Case/Scenario Capabilities. PowerTax uniquely provides this capability to create and maintain multiple versions of data to enable forecasting, what-if scenarios, and provision cases while preparing a tax return version of the data. Lucasys' Study/Run concept and model is designed very similarly to PowerPlan's Version table, which is a key structure in PowerPlan's model for copying data for case scenarios.

(b) Line Item Tracking of Book to Tax Differences and Asset Level Deferred Tax Computations. This unique structure for computing deferred taxes at an asset level is a key differentiator for PowerPlan, especially with utility companies. Lucasys' architecture for computing its Record_id and Temp diff id is at the same level of asset detail and structure as PowerPlan's Tax Record Id and Reconcile Item Id, although there are a number of other ways that Lucasys could have designed and structured this.

(c) Bonus Depreciation. PowerPlan uniquely architects this business requirement as a change in asset value instead of extra depreciation, which is not how it is architected by other tax depreciation solutions and which is contrary to applicable accounting principles. It is highly unlikely that Lucasys would have designed this requirement in this manner if it was not following PowerPlan's proprietary database structure.

These are examples of Lucasys' misappropriation of components of PowerPlan's proprietary database architecture and structures in its early development of its Deferred Tax module, which may not be inclusive. Given the findings to date, PowerPlan is concerned that Lucasys will misappropriate additional proprietary features and components of PowerTax as it continues to develop its competing Deferred Tax module.

Jason Alloy, Esq.
Joseph Saul, Esq.
March 9, 2020
Page 7

4. PowerPlan Has Not Been Provided with Information to Allow It to Evaluate Lucasys' Potential Misappropriation of Proprietary PowerPlan Customer or Pricing Information.

Lucasys software is being developed for, and now marketed and promoted to, the same target customer base served by PowerPlan's software solutions. Moreover, Lucasys is continuing to provide consulting services to some of PowerPlan customers – which provides it with continuing access not only to PowerPlan's proprietary software (including databases), but also to proprietary PowerPlan customer and pricing information.

PowerPlan's investigation pursuant to the Agreed Process has focused on Lucasys' development of software to date, and related business plans, and not on Lucasys' marketing or potential sale of software to PowerPlan's customers or other potential customers. In fact, to date Lucasys has declined to produce requested documents or information which would permit PowerPlan to evaluate whether Lucasys is misusing PowerPlan's proprietary customer or pricing information in connection with its efforts to market, price and sell its software solutions to the same customers.

C. Addressing and Resolving Lucasys' Misappropriation of PowerPlan's Trade Secrets and Proprietary Information.

I reiterate that PowerPlan's trade secrets and other proprietary information and intellectual property are extremely important to it and to its business. PowerPlan will take all steps necessary to protect this information. It cannot allow Lucasys and its principals to continue to misappropriate or otherwise misuse this information to develop a software platform to market and sell to the same customer base serviced by PowerPlan.

Accordingly, if Lucasys chooses to continue to develop and market software that competes with PowerPlan software, then PowerPlan hereby demands that Lucasys, and all others acting in concert with it (including but not limited to Messrs. Lantukh, Chang, Strang, and Nguyen, and any and all persons or entities who own an interest in or are working with Lucasys in relation to its development and sale of its software), comply with each of the following steps:

1. Cease and desist from all use of any PowerPlan trade secrets and confidential and proprietary information ("PowerPlan Protected Information") – including but not limited to knowledge or information regarding PowerPlan's proprietary database model, schema, structures, systems, and tables – in connection with the design, development, marketing and sale of Lucasys software;
2. Remove the ARAM Calc tool from Lucasys' website, and cease and desist from otherwise using that tool as currently designed;

Jason Alloy, Esq.
Joseph Saul, Esq.
March 9, 2020
Page 8

3. Cease development of the current forms of the Lucasys CoPilot and Deferred Tax modules, and redevelop these software modules without making any use of PowerPlan's Protected Information, and in a manner that avoids having the Lucasys software integrate with and access, retrieve, and export data from PowerPlan databases; and

4. Cease and desist from any further design, development, marketing, sales, or efforts to sell Lucasys software, unless and until Lucasys can prove to PowerPlan that its software is and will continue to be independently designed and developed without any use of or reliance upon PowerPlan's Protected Information, and can be priced and sold to customers without use of PowerPlan's proprietary customer and pricing information.

In addition, there is an inherent conflict between Lucasys continuing to have access to PowerPlan's proprietary software through its consulting engagements with PowerPlan customers, and its development of competing software to be marketed and sold to those and other PowerPlan customers, especially considering the misappropriation shown in this letter. This creates an ongoing risk that Lucasys will continue to misappropriate PowerPlan Protected Information. It also creates a conflict of interest for Lucasys, because Lucasys has financial incentive for its consulting customers to be dissatisfied with the very software (PowerPlan's) it was retained to help implement. Thus, if Lucasys chooses to continue to develop software that competes with PowerPlan's, then PowerPlan will have no choice but to exercise its rights under its software license agreements to withhold consent from customers who seek to provide Lucasys with access to PowerPlan software in connection with consulting engagements.

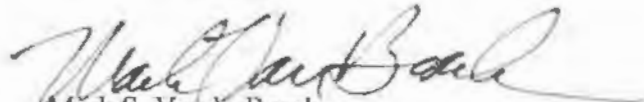
Alternatively, should Lucasys choose to discontinue its software development, PowerPlan would be open to discussing how Lucasys' consulting business could coexist with PowerPlan's business without misappropriating PowerPlan Protected Information. This might include an arrangement for PowerPlan to consent to customers seeking to provide Lucasys with access to PowerPlan software in connection with consulting engagements, subject to appropriate non-disclosure and confidentiality obligations.

As we discussed on the phone, PowerPlan looks forward to receiving, in an expeditious manner, any responses that Lucasys has to the findings summarized in this letter. Please contact me to advise a reasonable time frame for your clients' response. I and PowerPlan also look forward to promptly discussing with you and Lucasys the manner through which Lucasys will comply with the demands made in this letter, and options for potential resolution of the claims, disputes, and open issues between the parties.

Jason Alloy, Esq.
Joseph Saul, Esq.
March 9, 2020
Page 9

Nothing said in or omitted from this letter shall amount to a waiver of any of PowerPlan's rights, claims, and remedies regarding these matters, all of which are expressly reserved.

Very truly yours,



Mark S. VanderBroek

MSV;jh

Cc: Mr. Jim Dahlby
Jonathan Sucher, Esq.
Lloyd Farr, Esq.
Peter Munk, Esq.

**Attachment to March 9, 2020 Letter from Mark VanderBroek to Jason Alloy and
Joseph Saul Re: PowerPlan, Inc. v. Lucasys, Inc.**

**CONFIDENTIAL – Subject to December 4, 2019 Agreed Process for
Information Exchange and Dispute Resolution Between PowerPlan and Lucasys**

Lucasys ARAM Calc Tool

The database for Lucasys' ARAM Calc tool has at least two tables that strongly correlate with and derive from tables in PowerPlan's database model. The table below shows the mapping between columns in the Lucasys ARAM Calc Table, aram_cal_tax_depreciation, and tables and columns in the PowerPlan database model.

Lucasys ARAM Calc Column	PowerPlan Table	PowerPlan Column
Id		primary key
CalculatorId		primary key
TaxYear	TAX_DEPRECIATION	TAX_YEAR
Company	COMPANY_SETUP	DESCRIPTION
TaxBook	TAX_BOOK	DESCRIPTION
TaxClass	TAX_CLASS	DESCRIPTION
Vintage	VINTAGE	DESCRIPTION
InServiceMonth	TAX_RECORD_CONTROL	IN_SERVICE_MONTH
TaxRate	DEFERRED_RATES	DESCRIPTION
BookBalance	TAX_DEPRECIATION	BOOK_BALANCE
TaxBalance	TAX_DEPRECIATION	TAX_BALANCE
AccumReserve	TAX_DEPRECIATION	ACCUM_RESERVE
Depreciation	TAX_DEPRECIATION	DEPRECIATION
JobCreationAmount	TAX_DEPRECIATION	JOB_CREATION_AMOUNT
GainLoss	TAX_DEPRECIATION	GAIN_LOSS
BookBalanceEnd	TAX_DEPRECIATION	BOOK_BALANCE_END
TaxBalanceEnd	TAX_DEPRECIATION	TAX_BALANCE_END
AccumReserveEnd	TAX_DEPRECIATION	ACCUM_RESERVE_END
TaxRecordId	TAX_RECORD_CONTROL	TAX_RECORD_ID

The table below shows the mapping between columns in the Lucasys ARAM Calc Table, aram_calc_book_depr_rates, and tables and columns in the PowerPlan's database model.

Lucasys ARAM Calc Column	PowerPlan Table	PowerPlan Column
Calculator_id		
DeprGroupId	DEPR_GROUP	DEPR_GROUP_ID
DeprSummary2Id	DEPR_GROUP	DEPR_SUMMARY2_ID
SubledgerTypeId	DEPR_GROUP	SUBLEDGER_TYPE_ID
DeprSummaryId	DEPR_GROUP	DEPR_SUMMARY_ID
CompanyId	DEPR_GROUP	COMPANY_ID
DeprMethodId	DEPR_GROUP	DEPR_METHOD_ID
ReserveAcctId	DEPR_GROUP	RESERVE_ACCOUNT_ID
ExpenseAcctId	DEPR_GROUP	EXPENSE_ACCOUNT_ID
DeprGroup	DEPR_GROUP	DESCRIPTION
FactorId	DEPR_GROUP	FACTOR_ID
	DEPR_GROUP	USER_ID
MidPeriodConv	DEPR_GROUP	MID_PERIOD_CONV
MidPeriodMethod	DEPR_GROUP	MID_PERIOD_METHOD
EstAnnNetAdd	DEPR_GROUP	EST_ANN_NET_ADDS
GainAcctId	DEPR_GROUP	GAIN_ACCT_ID
LossAcctId	DEPR_GROUP	LOSS_ACCT_ID
CorTreatment	DEPR_GROUP	COR_TREATMENT
SalvageTreatment	DEPR_GROUP	SALVAGE_TREATMENT
NetSalvageAmortLife	DEPR_GROUP	NET_SALVAGE_AMORT_LIFE
GainLossDefault	DEPR_GROUP	GAIN_LOSS_DEFAULT
DeprMethod	DEPRECIATION_METHOD	DESCRIPTION
EffectiveDate	DEPR_METHOD_RATES	EFFECTIVE_DATE
Rate	DEPR_METHOD_RATES	RATE
NetGross	DEPR_METHOD_RATES	NET_GROSS
OverDeprCheck	DEPR_METHOD_RATES	OVER_DEPR_CHECK
NetSalvagePct	DEPR_METHOD_RATES	NET_SALVAGE_PCT
EndOfLife	DEPR_METHOD_RATES	END_OF_LIFE
SetOfBooksId	DEPR_METHOD_RATES	SET_OF_BOOKS_ID
MortalityCurveId	DEPR_METHOD_RATES	MORTALITY_CURVE_ID
ExpectedAverageLife	DEPR_METHOD_RATES	EXPECTED_AVERAGE_LIFE
Company	COMPANY_SETUP	DESCRIPTION
CostOfRemovalRate	DEPR_METHOD_RATES	COST_OF_REMOVAL_RATE

Lucasys Deferred Tax Software

The database for Lucasys' Deferred Tax module has at least three tables that display similarities that correlate with and derive from analogous tables and columns within PowerPlan's database model, as shown below:

Lucasys Tax Table	Lucasys Tax Column	Powerplan Table	Powerplan Column
DT_JURISDICTION_RATE	DT_JURISDICTION_ID	NORMALIZATION_SCHEM A	JURISDICTION_ID
DT_JURISDICTION_RATE	USER_NAME	*	USER_ID
DT_JURISDICTION_RATE	TIME_STAMP	*	TIME_STAMP
DT_JURISDICTION_RATE	STATUTORY_RATE	DEFERRED_INCOME_TAX_ RATES	STATUTORY_RATE
DT_JURISDICTION_RATE	GROSS_UP_RATE	DEFERRED_INCOME_TAX_ RATES	GROSSUP_RATE
DT_RECORD_BASIS		TAX_BOOK_RECONCILE	TAX_INCLUDE_ID
DT_RECORD_BASIS	LS_PERIOD_ID	TAX_BOOK_RECONCILE	TAX_YEAR
DT_RECORD_BASIS		TAX_BOOK_RECONCILE	TAX_RECORD_ID
DT_RECORD_BASIS	DT_TEMP_DIFF_ID	TAX_BOOK_RECONCILE	RECONCILE_ITEM_ID
DT_RECORD_BASIS	TIME_STAMP	TAX_BOOK_RECONCILE	TIME_STAMP
DT_RECORD_BASIS	USER_NAME	TAX_BOOK_RECONCILE	USER_ID
DT_RECORD_BASIS	BOOK_BASIS_BEG	TAX_BOOK_RECONCILE	BASIS_AMOUNT_BEG
DT_RECORD_BASIS	BOOK_BASIS_END	TAX_BOOK_RECONCILE	BASIS_AMOUNT_END
DT_RECORD_BASIS	BOOK_BASIS_ACTIVITY	TAX_BOOK_RECONCILE	BASIS_AMOUNT_ACTIVITY
DT_RECORD_BASIS		TAX_BOOK_RECONCILE	BASIS_AMOUNT_INPUT_R ETIRE
DT_RECORD_BASIS		TAX_BOOK_RECONCILE	BASIS_AMOUNT_TRANSFE R
DT_RECORD_BASIS	TAX_BASIS_BEG	TAX_BOOK_RECONCILE	BASIS_AMOUNT_BEG
DT_RECORD_BASIS	TAX_BASIS_END	TAX_BOOK_RECONCILE	BASIS_AMOUNT_END
DT_RECORD_BASIS	TAX_BASIS_ACTIVITY	TAX_BOOK_RECONCILE	BASIS_AMOUNT_ACTIVITY
DT_RECORD_BASIS	TEMP_DIFF_BEG	TAX_BOOK_RECONCILE	BASIS_AMOUNT_BEG
DT_RECORD_BASIS	TEMP_DIFF_END	TAX_BOOK_RECONCILE	BASIS_AMOUNT_END
DT_RECORD_BASIS	TEMP_DIFF_ACTIVITY	TAX_BOOK_RECONCILE	BASIS_AMOUNT_ACTIVITY
DT_RECORD_BASIS	DT_RECORD_ID		
DT_RECORD_BASIS	DT_RUN_ID	VERSION	VERSION_ID
DT_RECORD_BASIS	DT_JURISDICTION_ID	NORMALIZATION_SCHEM A	JURISDICTION_ID
DT_RECORD_BASIS	LS_BOOK_TAX_GROUP_I D	NORMALIZATION_SCHEM A	GL_ACCOUNT_ID
DT_RECORD	LS_COMPANY_ID	JURISDICTION	COMPANY_ID
DT_RECORD	LS_GL_ACCOUNT_ID	NORMALIZATION_SCHEM A	GL_ACCOUNT_ID


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Products

Reports & Query

PowerPlan contains a wide variety of on-line reporting and ad-hoc querying. The base system comes delivered with over 700 standard reports. Wherever appropriate the reports provide the user the ability to specify at report time:

- the time period or time span to be reported (e.g., the last four months of 2004) and;
- filtering, i.e., restricting the reports to certain locations, companies, work orders, etc.

Reports are available online, to a printer, to a file (e.g. pdf or text file formats), exported to MS Excel, or may be sent through e-mail. Special features including 'zoom', a word search facility and paging help in reviewing the report on the screen. Reports can be run from a batch, triggered by the user, or triggered from an event (e.g., the monthly close). Response time for reports is generally immediate due to a data model that includes tiers of summary variables. Hence, an account activity report does not need to loop through all the records on the CPR and so returns to the screen in a few seconds.

PowerPlan provides tab driven queries into projects, transactions, assets, depreciation, and tax records with selections and logical operators. Embedded within the windows are intuitive tabs and sorts that allow the user to drill down and easily find the required data elements. As users make tab selections, PowerPlan dynamically builds SQL behind the scenes. For example, assets can be queried based on any combination of the following characteristics: Company, Business Segment, General Ledger Account (e.g. In-Service Asset, Under Cons), Plant Account and Sub-Account, State, County, Property Tax District, Location (Major & Asset), Retirement Unit, Depreciation Group, Project Number, Asset ID or Description, Vintage, Status (e.g. Active or Retired), and Any number of additional, user defined identifiers.

These queries can be saved, named and modified for later use. The accountant has the option of running one of PowerPlan's standard reports against the queried data or exporting the queried data to a choice of several external file formats (e.g. Access, EXCEL, Lotus, DBASE, Text File, etc.).

Project related reports include: Summaries of balances and activities; Detail transactions; Trial balances; Calculation summaries for items like AFUDC, tax interest, overheads, and unitization; Monthly actual verses estimated expenditures; Audit reports; Various work order and project summaries; Overhead Allocation Detail; Unitization Detail; and Budget Comparisons.

Asset Management Reports include:

- Summaries of balances and activities;



- Detail transactions;
- Trial balances;
- Various analyses such as net value and replace costs,
- Depreciation and depreciation analysis reports;
- Various CPR activity and balance reports;
- FERC Form 1 reports, including pages 200, 204-207, 216, 217, 219, 221, 261 (some items), 274, 336, 337, 423, and 430;
- Unit catalogue, property/component unit and location reports;
- Audit reports;

PowerTax Reports include:

- Summaries of balances and activities;
- Support for federal tax forms - 4562, 4797, 4626, Schedule D, etc.;
- Tax depreciation detail for all books - Federal, States, AMT, ACE, E&P, Straight Line, etc.;
- APB11 deferred tax reports, tax recovery, book recovery, ARAM rate, excess DFIT analysis;
- FAS109 deferred tax reports, liability at statutory rates, Federal and state gross-ups, FAS109 liability;
- Forecast Reports;
- Over any number of future years as well as end-of-life analysis.

FERC reports are generated from two sources. Most are reported from a Summary Ledger which stores summarized asset values by month to ensure fast reporting performance. PowerPlant allows the user to determine which accounts are maintained and reported within the system. Generally, all asset related accounts (e.g., 101, 101 1, 102, 104, 105, 106, 107, 108, 109, 111, 118, 121, 122, etc.) are maintained and reported. Asset specific reports are generated directly from the CPR. Specific pages are produced correctly (e.g., 106 and 101 are combined).

PowerPlant has its own report management system. Reports can be added or changed dynamically with no compilation or linking required. PowerPlant also provides on-line query wizards so that the user can create and save his own informal queries and reports.

All PowerPlant reports come generated in the PowerBuilder report painter, which is easy to use and intuitive. As an open system, other reporting tools such as InfoMaker or Crystal Reports can be used; However the completeness of available reporting alleviates the need for such 3rd party tools.

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April 17, 2020

Via Email and Overnight Courier

Jason S. Alloy, Esq.
Joseph Saul, Esq.
Robbins Ross Alloy Belinfante Littlefield LLC
500 14th Street, NW
Atlanta, Georgia 30318

Re: PowerPlan, Inc. ("PowerPlan") v. Lucasys, Inc. ("Lucasys") *et al.*
Reply to Lucasys' March 20 Letter under Pre-Litigation Agreed Process

Dear Jason and Joseph:

This letter responds to Jason's March 20, 2020 letter.

While the parties disagree on certain issues, your letter does not dispute at least one important fact: Lucasys and its principals are and/or will be making unauthorized use of their proprietary knowledge of PowerPlan's database model to design and develop competing Lucasys software modules that will directly integrate and work with PowerPlan databases. This alone amounts to both a misappropriation of PowerPlan trade secrets and a breach of Lucasys' and its principals' contractual confidentiality and non-disclosure obligations. Yet, your letter contains no suggestions whatsoever from Lucasys for resolving this and PowerPlan's other concerns.

A. Lucasys' Unauthorized Use of Its Proprietary Knowledge about PowerPlan's Database Model to Develop Competing Software to Directly Integrate with PowerPlan Databases.

As mentioned, your letter does not dispute that Lucasys and its principals are and/or will be using their proprietary knowledge of PowerPlan's database model to design and develop an automated integration between Lucasys software modules and PowerPlan databases. This integration will allow Lucasys' software to access, retrieve, and export data from customers' PowerPlan databases, run various calculations, processes and reports through the Lucasys software, and then import data back into the PowerPlan databases as applicable. Nor does Lucasys dispute that its knowledge of PowerPlan's proprietary database model is necessary to: (1) know how and where to access the data from a PowerPlan database needed for the Lucasys software processes, (2) write SQL commands to retrieve that particular data from a PowerPlan database and

Jason Alloy, Esq.
Joseph Saul, Esq.
April 17, 2020
Page 3

Oracle Financial and SAP ERP. However, others, such as PowerPlan, do not. There is nothing improper with PowerPlan not providing an API or publishing its database model. This does not justify Lucasys using its proprietary knowledge of PowerPlan's database model for competitive advantage to design an automated integration of its competing software modules to work along with PowerPlan databases. Since PowerPlan neither supports an API nor publishes its data model, Lucasys' integration development strategy necessarily relies on its unauthorized and unlawful use of PowerPlan's proprietary information and trade secrets.

Finally, you say in your letter that "accessing a [database] system to obtain data does not amount to misappropriating a system." But Lucasys' unauthorized use of its proprietary knowledge of PowerPlan's database model to design/develop automated integrations between Lucasys software modules and PowerPlan databases for its own commercial advantage does amount to misappropriating PowerPlan proprietary information and trade secrets.

B. Lucasys' ARAM Calc Marketing Tool

Your letter does not dispute that Lucasys' ARAM Calc tool copied substantial portions of PowerPlan's database table headings and structures, which are proprietary information and also protected by copyright. That Lucasys may use them only for integration to PowerTax's Fixed Assets system does not provide a defense to its misappropriation and copying of this proprietary information.

C. Lucasys' Deferred Tax Module

With respect to the three unique PowerTax features described in my March 9, 2020 letter that Lucasys incorporated into its Deferred Tax data model, your letter states that many tax accounting and forecasting systems include similar functionality. But your letter does not respond to PowerPlan's points that these Lucasys features are designed to work in a similar manner to the unique ways that PowerPlan's similar features work. Nor does it address the lack of typical development processes and analysis that would be expected if Lucasys was developing its Deferred Tax database model from scratch as opposed to mimicking PowerPlan's design.

Lantukh, Chang, and Strang have spent most of their professional careers accessing, modifying, implementing, and working with PowerPlan software (primarily PowerTax) and PowerPlan customers, either as a PowerPlan employee or as a consultant servicing PowerPlan customers. Each of them have intimate knowledge of PowerPlan's software systems, including its database model. As a result, it would be virtually impossible for them and Lucasys to design, develop, market and sell competing software without disclosing and using confidential and proprietary aspects of PowerPlan's software and customer information. It is inevitable that they will continue to do so, based on the competing software modules they intend to develop and offer for sale and the manner in which they have been and apparently intend to continue developing software.

Appointment

From: Jim Dahlby [jdahlby@pwrplan.com]
Sent: 4/21/2020 10:52:40 AM
To: Jim Duffy [jduffy@pwrplan.com]
Subject: Accepted: URGENT follow up, Lucasys at Algonquin/Liberty
Start: 4/21/2020 2:30:00 PM
End: 4/21/2020 3:00:00 PM
Show Time As: Busy



Message

From: Jim Dahlby [jdahlby@pwrplan.com]
Sent: 4/24/2020 3:39:32 PM
To: Jamie Carr [jcarr@pwrplan.com]
Subject: RE: Algonquin/Liberty scope of work

Did a call get scheduled?

Jim Dahlby

Mobile: +1 678.269.7950
 jdahlby@pwrplan.com

From: Jamie Carr <jcarr@pwrplan.com>
Sent: Friday, April 24, 2020 9:28 AM
To: Jim Dahlby <jdahlby@pwrplan.com>; Jim Duffy <jduffy@pwrplan.com>; Jay Marnell <jmarnell@pwrplan.com>; Jason Szelest <jszelest@pwrplan.com>
Cc: Jonathan Sucher <jonathan.sucher@powerplan.com>
Subject: RE: Algonquin/Liberty scope of work

Yes, we definitely need a call.

Jamie Carr

Senior Director, Implementation Strategy

Mobile: 330.803.3556
 jcarr@pwrplan.com
 PowerPlan.com



From: Jim Dahlby <jdahlby@pwrplan.com>
Sent: Thursday, April 23, 2020 6:29 PM
To: Jim Duffy <jduffy@pwrplan.com>; Jamie Carr <jcarr@pwrplan.com>; Jay Marnell <jmarnell@pwrplan.com>; Jason Szelest <jszelest@pwrplan.com>
Cc: Jonathan Sucher <jonathan.sucher@powerplan.com>
Subject: RE: Algonquin/Liberty scope of work

Jim,

I think a quick phone call with Jamie and Laura (maybe Luisa) make sense. At a high level we cover some of those tasks as Jamie described. But I think we need to understand more about the specific deliverables and activities they were going to be expected and perform to complete those tasks.

Was the expectation for going and gather requirements from all the different tax users? Do they have common processes in place or is part of the work consolidating requirements from multiple parts of the acquired utilities?

Would they be actually populating design templates or just assisting in coordinating the effort for the Liberty tax group? For instance, if they have 5 different sets of tax records at different gas utilities and they want to get common data structure would analyzing the data and completing the templates for a new "global" data set be part of the scope.

Jim Dahlby

Mobile: +1 678.269.7950



jdahlby@pwrplan.com

From: Jim Duffy <jduffy@pwrplan.com>
Sent: Thursday, April 23, 2020 3:45 PM
To: Jamie Carr <jcarr@pwrplan.com>; Jay Marnell <jmarnell@pwrplan.com>; Jim Dahlby <jdahlby@pwrplan.com>; Jason Szelest <jszelest@pwrplan.com>
Cc: Jonathan Sucher <jonathan.sucher@powerplan.com>
Subject: RE: Algonquin/Liberty scope of work

"Represent client's tax department" is something we typically do?

Thanks,
Jim

Jim Duffy
Strategic Accounts Executive

Mobile: +1 202.340.4164
Jim.Duffy@PowerPlan.com
PowerPlan.com



From: Jamie Carr <jcarr@pwrplan.com>
Sent: Thursday, April 23, 2020 3:42 PM
To: Jim Duffy <jduffy@pwrplan.com>; Jay Marnell <jmarnell@pwrplan.com>; Jim Dahlby <jdahlby@pwrplan.com>; Jason Szelest <jszelest@pwrplan.com>
Cc: Jonathan Sucher <jonathan.sucher@powerplan.com>
Subject: RE: Algonquin/Liberty scope of work

++Jason

Jamie Carr
Senior Director, Implementation Strategy

Mobile: 330.603.3556
jcarr@pwrplan.com
PowerPlan.com



From: Jamie Carr
Sent: Thursday, April 23, 2020 3:41 PM
To: Jim Duffy <jduffy@pwrplan.com>; Jay Marnell <jmarnell@pwrplan.com>; Jim Dahlby <jdahlby@pwrplan.com>
Cc: Jonathan Sucher <Jonathan.Sucher@powerplan.com>
Subject: RE: Algonquin/Liberty scope of work

This scope is essentially what we'd do in design workshops and throughout the project. Maybe this is a draft of the response:

The scope below is part of what PowerPlan's Solution Architects and Subject Matter Experts focus on during design sessions. As we work through an implementation, we will learn more about Algonquin and Algonquin will learn more about the PowerPlan modules. Through this education process, PowerPlan will make additional recommendations, as

necessary, to ensure the software is used to its capacity, and the functional requirements are met. We also as a standard step in any implementation, collaboratively design the future state processes the client will follow.

Jamie Carr

Senior Director, Implementation Strategy

Mobile: 330.603.3556

jcarr@pwrplan.com

PowerPlan.com



From: Jim Duffy <jduffy@pwrplan.com>

Sent: Thursday, April 23, 2020 1:53 PM

To: Jamie Carr <jcarr@pwrplan.com>; Jay Marnell <jmarnell@pwrplan.com>; Jim Dahlby <jdahlby@pwrplan.com>

Cc: Jonathan Sucher <jonathan.sucher@powerplan.com>

Subject: Algonquin/Liberty scope of work

Guys,

Please see below and advise on how you'd like to proceed.

Thanks,

Jim

Jim Duffy

Strategic Accounts Executive

Mobile: +1 202.340.4164

Jim.Duffy@PowerPlan.com

PowerPlan.com



From: Luisa Read <Luisa.Read@libertyutilities.com>

Sent: Thursday, April 23, 2020 1:45 PM

To: Jim Duffy <jduffy@pwrplan.com>

Cc: Laura Naclerio <Laura.Naclerio@libertyutilities.com>

Subject: [EXT] RE: Scope of work?

Exercise CAUTION when opening links or attachments.

Hi Jim,

I have copied Laura to this email as she is the Senior Director of tax at Liberty and this resource will be working very closely with her and her team.

The scope of work is as follows:

Provide advisory services related to fixed assets and represent Client's tax department during the global design phase of Client's Customer First Project. Services will include assisting the tax department and the project team in determining the appropriate tax related software modules that should be deployed in subsequent releases and the design of data and configuration around its tax processes and systems.

- Participate in person in global design workshops related to PowerPlan fixed assets processes

and Power Tax (tax provision and deferred taxes). Design workshops may occur in the U.S. or in Oakville, Ontario, Canada. If a workshop is not expected to last a full day, participation may be by telephone or video conference

- o Ensure functional requirements are addressed in the workshops
- o Ensure functional requirements are delivered in the standard process (fit gap analysis)
- o Ensure the to-be process design fulfills Liberty Utilities requirements
- Development and review of the to-be-processes, report lists which will include all traceable information and project decisions
- o Identification of reports required
- o Identify change impacts of the process
- o Security and job role segregation
- o Review process design documents (PDDs)
- Weekly status reporting on the progress to date

Luisa Read | Liberty Algonquin Business Services | Vice President
P: 905-465-4505 | C: 416-988-0071 | E: Luisa.Read@libertyutilities.com

From: Jim Duffy [<mailto:jduffy@pwrplan.com>]
Sent: Thursday, April 23, 2020 1:00 PM
To: Luisa Read <Luisa.Read@libertyutilities.com>
Subject: Scope of work?

Hi Luisa,

In trying to help you come up with a "Plan B," would you be willing to share with me the scope of work from the SOW you signed with Lucasys? Something you wouldn't mind me potentially forwarding to external third parties. We've got a few options in mind (including our own) but obviously they need to know what they'd be signing up for...

Thanks,
Jim

Jim Duffy
Strategic Accounts Executive

Mobile: +1 202.340.4164
Jim.Duffy@PowerPlan.com
PowerPlan.com



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Message

From: Jim Dahlby [jdahlby@pwrplan.com]
Sent: 6/2/2020 11:04:18 AM
To: Brett Bertz [brett.bertz@powerplan.com]
Subject: RE: Liberty Resource

The guidelines for the team engaging directly is probably something we need to work on, to address Jonathan's notes on [REDACTED]

Jim

Jim Dahlby

Mobile: +1 678.269.7950
jdahlby@pwrplan.com

From: Brett Bertz <brett.bertz@powerplan.com>
Sent: Tuesday, June 2, 2020 10:58 AM
To: Jim Dahlby <jdahlby@pwrplan.com>
Subject: FW: Liberty Resource

[REDACTED]

From: Jonathan Sucher <jonathan.sucher@powerplan.com>
Sent: Tuesday, May 19, 2020 3:21 PM
To: Brett Bertz <brett.bertz@powerplan.com>; Jim Duffy <jduffy@pwrplan.com>; Maria Vaccaro <maria.vaccaro@powerplan.com>; Skip Fowler <Skip.Fowler@powerplan.com>
Subject: RE: Liberty Resource

[REDACTED]

Regards,

Jonathan Sucher
Senior Corporate Counsel

Office: +1 678.223.2714
Mobile: +1 706.218.8165

jonathan.sucher@powerplan.com
PowerPlan.com



PLAN

From: Brett Bertz <brett.bertz@powerplan.com>
Sent: Tuesday, May 19, 2020 3:12 PM
To: Jim Duffy <jduffy@pwrplan.com>; Maria Vaccaro <maria.vaccaro@powerplan.com>; Skip Fowler <Skip.Fowler@powerplan.com>; Jonathan Sucher <jonathan.sucher@powerplan.com>
Subject: RE: Liberty Resource



[REDACTED]

BB

From: Jim Duffy <jduffy@pwrplan.com>

Sent: Tuesday, May 19, 2020 1:22 PM

To: Maria Vaccaro <maria.vaccaro@powerplan.com>; Skip Fowler <Skip.Fowler@powerplan.com>; Brett Bertz <brett.bertz@powerplan.com>; Jonathan Sucher <jonathan.sucher@powerplan.com>

Subject: RE: Liberty Resource

+Brett +Jonathan.

[REDACTED]

Thoughts?

Thanks,
Jim

Jim Duffy

Vice President - Sales

Mobile: +1 202.340.4164

Jim.Duffy@PowerPlan.com

PowerPlan.com



From: Maria Vaccaro <maria.vaccaro@powerplan.com>

Sent: Tuesday, May 19, 2020 1:07 PM

To: Jim Duffy <jduffy@pwrplan.com>; Skip Fowler <Skip.Fowler@powerplan.com>

Subject: Liberty Resource

See below...they are using RCCI I still think we should try and push for them to use one of our resources.

From: Luisa Read <Luisa.Read@libertyutilities.com>

Sent: Tuesday, May 19, 2020 12:11 PM

To: Maria Vaccaro <maria.vaccaro@powerplan.com>

Cc: Cory Ching <cory.ching@powerplan.com>

Subject: RE: [EXT] RE: Contact Info & Tax Project Resource

Hi Maria,

Thank you for your email. It doesn't look like we will need PowerPlan's help in finding a resource. We are looking at engaging with an entity called Regulated Capital Consultants for their help. I hope this will not be an issue but would be happy to jump on a call to discuss.

Luisa

Luisa Read | Liberty Algonquin Business Services | Vice President
P: 905-465-4505 | C: 416-988-0071 | E: Luisa.Read@libertyutilities.com

From: Maria Vaccaro [<mailto:maria.vaccaro@powerplan.com>]
Sent: Monday, May 18, 2020 8:34 AM
To: Luisa Read <Luisa.Read@libertyutilities.com>
Cc: Cory Ching <cory.ching@powerplan.com>
Subject: RE: [EXT] RE: Contact Info & Tax Project Resource

Thanks Luisa and I hope you are enjoying your long weekend.

Do either of the following work for you?

Tuesday May 19th – 2:30 – 3:30
Thursday May 21st 12Pm – 1PM
Friday May 22nd 11AM – 11PM
Tuesday May 26th 12PM – 1:30PM

Thank you

Maria Vaccaro
Strategic Account Executive
Mobile: +1 416.566.8589
maria.vaccaro@powerplan.com
PowerPlan.com



PLAN

From: Luisa Read <Luisa.Read@libertyutilities.com>
Sent: Friday, May 15, 2020 10:29 AM
To: Maria Vaccaro <maria.vaccaro@powerplan.com>
Cc: Cory Ching <cory.ching@powerplan.com>
Subject: [EXT] RE: Contact Info & Tax Project Resource

Exercise CAUTION when opening links or attachments.

Hi Maria,

Sorry for the delay in getting back to you. We are also looking for tax resources to help us as well. Let's touch base next week to discuss. Can you propose some dates and times next week?

Luisa

Luisa Read | Liberty Algonquin Business Services | Vice President
P: 905-465-4505 | C: 416-988-0071 | E: Luisa.Read@libertyutilities.com

From: Maria Vaccaro [<mailto:maria.vaccaro@powerplan.com>]
Sent: Wednesday, May 13, 2020 6:04 PM
To: Luisa Read <Luisa.Read@libertyutilities.com>

Cc: Cory Ching <cory.ching@powerplan.com>
Subject: RE: Contact Info & Tax Project Resource

Hi Luisa,

Just following up on the note below, are you available for 15 minutes tomorrow or on Friday to talk about a proposed solution on the tax resource?

Thank you

Maria Vaccaro
Strategic Account Executive

Mobile: +1 416.566.6589
maria.vaccaro@powerplan.com
PowerPlan.com



From: Maria Vaccaro
Sent: Monday, May 11, 2020 5:55 PM
To: Luisa Read <Luisa.Read@libertyutilities.com>
Cc: Cory Ching <cory.ching@powerplan.com>
Subject: Contact Info & Tax Project Resource

Hi Luisa,

Hope you had a great weekend. It was great to virtually meet you last week. I wanted to pass along my contact details (see below), feel free to reach out at anytime with questions, concerns, escalations. Cory and I will setup some time with you and the team to discuss cadence moving forward.

Also, in reference to the **Tax Project Resource**, what is your availability this week to meet with Jim, and Skip to discuss a proposed option on how to move forward?

Thank you

Maria Vaccaro
Strategic Account Executive

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PowerPlan.com



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ROBBINS

LITIGATION AND REGULATORY LAW

Jason S. Alloy
DIRECT LINE: 678-701-9374
Email: jalloy@robbinsfirm.com

April 29, 2020

VIA EMAIL AND U.S. MAIL

Mark S. VanderBroek, Esq.
Peter Munk, Esq.
Nelson Mullins Riley & Scarborough LLP
Atlantic Station
201 17th Street, NW - Suite 1700
Atlanta, Georgia 30363
mark.vanderbroek@nelsonmullins.com
peter.munk@nelsonmullins.com

Re: *PowerPlan, Inc. v. Lucasys, Inc.*

Dear Mark and Peter:

We have received your letter dated April 17, 2020 terminating the Agreed Process. Following receipt of the letter, we have learned of very troubling actions by PowerPlan. Specifically, PowerPlan is now interfering with Lucasys' customer agreements and relationships and is attempting to lock Lucasys out from working with its customers that use PowerPlan's software, including most recently interfering with Lucasys' relationship with Liberty Utilities.

PowerPlan's actions are anti-competitive and would likely raise the ire of various federal and state anti-trust authorities. PowerPlan's actions also violate multiple unfair competition statutes and constitute tortious interference of Lucasys' customer relationships and contracts. PowerPlan is causing millions of dollars in damages to Lucasys.

For the reasons set forth in more detail below, Lucasys demands that PowerPlan immediately cease and desist from its improper conduct, including interfering with Lucasys' relationship with its customers. In addition, if there is

ROBBINS ROSS ALLOY BILINFANTE LITTLEFIELD LLC

500 14th STREET, N.W., ATLANTA, GA 30318 www.robbinsfirm.com



Mark S. VanderBroek, Esq.
Peter Munk, Esq.
April 29, 2020
Page 3

is even more concerning because PowerPlan's customers are public utilities, and PowerPlan's actions are preventing utilities from being able to use their own data as they wish.

The most recent specific PowerPlan conduct that troubles us relates to Liberty Utilities, which is a Lucasys client. Liberty Utilities engaged Lucasys to advise on best practices through its design phase of a financial transformation project. In this project, Lucasys has served as an extension of Liberty Utilities' tax department to advocate for and provide advisory services related to Liberty's business processes and requirements. To perform these services, Lucasys does not require access to any PowerPlan confidential or proprietary information.

PowerPlan, however, notified Liberty Utilities that it cannot consult with Lucasys on this process. We also understand that PowerPlan is threatening Liberty Utilities that it may take legal action against Liberty Utilities if Liberty Utilities continues to work with Lucasys or contracts with Lucasys in the future. This is deeply concerning to say the least.

Finally, to preserve and prevent spoliation of information and documents relevant to PowerPlan's improper actions, we demand that PowerPlan, and all others acting in concert with it, put a litigation hold in place and take all necessary steps to preserve and retain, and to avoid deleting, destroying, altering, or overwriting, all documents, records, and electronically stored information ("ESI") in its possession, custody, or control that refer, relate to, or evidence any of the practices and conduct referenced in this letter. This includes but is not limited to maintaining and preserving all documents and ESI in the possession or control of PowerPlan, consisting of or relating or referring in any manner to any of the following:

- (1) PowerPlan's efforts to maintain the confidentiality of any of its alleged proprietary, confidential, or trade secret information,
- (2) PowerPlan's disclosure to the public or any person or entity of any of its alleged proprietary, confidential, or trade secret information,
- (3) All documents that refer or relate to how PowerPlan created/decided on the labels and terminology for the column headers in its software,

Message

From: Jim Dahlby [jdahlby@pwrplan.com]
Sent: 5/20/2020 1:04:21 PM
To: Joost Rutten [Joost.Rutten@powerplan.com]; Brett Bertz [brett.bertz@powerplan.com]; Marc Bortniker [marc.bortniker@powerplan.com]
Subject: RE: Customer contact list - IP Protection letter

I was thinking we should bring up the letter that's going out during the an Exec stand up to make sure the team is all aware.

Jim Dahlby

Mobile: +1 678.289.7950
jdahlby@pwrplan.com

From: Jonathan Sucher <jonathan.sucher@powerplan.com>
Sent: Wednesday, May 20, 2020 9:32 AM
To: Brett Bertz <brett.bertz@powerplan.com>; Marc Bortniker <marc.bortniker@powerplan.com>
Cc: Jim Dahlby <jdahlby@pwrplan.com>
Subject: RE: Customer contact list - IP Protection letter

Jonathan Sucher
Senior Corporate Counsel

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jonathan.sucher@powerplan.com
PowerPlan.com



From: Brett Bertz <brett.bertz@powerplan.com>
Sent: Wednesday, May 20, 2020 8:57 AM
To: Marc Bortniker <marc.bortniker@powerplan.com>; Jonathan Sucher <jonathan.sucher@powerplan.com>
Cc: Jim Dahlby <jdahlby@pwrplan.com>
Subject: RE: Customer contact list - IP Protection letter

From: Marc Bortniker <marc.bortniker@powerplan.com>
Sent: Wednesday, May 20, 2020 8:45 AM
To: Jonathan Sucher <jonathan.sucher@powerplan.com>; Brett Bertz <brett.bertz@powerplan.com>
Cc: Jim Dahlby <jdahlby@pwrplan.com>
Subject: RE: Customer contact list - IP Protection letter



[REDACTED]

From: Jonathan Sucher <jonathan.sucher@powerplan.com>

Sent: Tuesday, May 19, 2020 11:09 AM

To: Brett Bertz <brett.bertz@powerplan.com>; Marc Bortniker <marc.bortniker@powerplan.com>

Cc: Jim Dahlby <jdahlby@pwrplan.com>

Subject: Customer contact list - IP Protection letter

[REDACTED]

Regards,

Jonathan Sucher
Senior Corporate Counsel

Office: +1 678.223.2714
Mobile: +1 706.218.8165

jonathan.sucher@powerplan.com
PowerPlan.com





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May 21, 2020

VIA EMAIL

Suez Water Management and Services Inc.

ATTN: Michael Salas, Senior Vice President & Chief Information and Digital Officer <michael.salas@suez.com>
Andrienne Payson, Senior Vice President & General Counsel <andrienne.payson@suez.com>

RE: Protecting PowerPlan Proprietary Software and Intellectual Property Rights

Dear Mr. Salas and Ms. Payson:

Thank you for being a valued customer and partner of PowerPlan. In the spirit of this partnership, I am writing to you to raise a concern that PowerPlan has about access to our software and associated intellectual property by a specific third-party: Lucasys Inc.

Lucasys offers consulting services associated with PowerPlan software and software solutions that compete with PowerPlan software. To protect our intellectual property, including trade secrets, we cannot permit our customers to provide Lucasys with access to our proprietary software and associated confidential information while Lucasys is simultaneously developing, marketing, and selling competitive software to those same customers. This would create an intolerable risk that Lucasys will misuse and misappropriate our confidential information and unfairly use it to develop, market, and sell its competing software.

It is our understanding that you are currently using Lucasys to perform consulting work on the PowerPlan software, and that such consulting work has resulted in disclosure of PowerPlan's confidential information to Lucasys. However, the Master Software License and Services Agreement between our companies ("License Agreement") requires that you obtain our consent prior to disclosing our confidential information to third parties. Please be advised that, pursuant to those provisions, **PowerPlan does not consent to Lucasys having access to our software or associated confidential information.**

PowerPlan consent is not required for you to retain Lucasys for projects that will not involve access to, disclosure of, or working with PowerPlan software, data models, or other confidential information. Additionally, PowerPlan consent is not required for you to provide your data, in raw form, to Lucasys, provided it is being done in a way that does not involve third parties accessing PowerPlan's software or data models or schema, including the underlying database, to retrieve such data.

The remainder of this letter provides answers to certain questions that you may have relating to what the License Agreement says about confidential information, and the scope of PowerPlan's confidential and proprietary information.

What does my contract with PowerPlan say about confidential information?

To protect and preserve our intellectual property, including trade secrets, we take reasonable steps to maintain the confidentiality of our software and associated information. The License Agreement includes provisions in Sections 5.1(a) and 5.3 in which you acknowledge PowerPlan's proprietary rights in and to its software, including computer programs, manuals and supporting materials, and agree to maintain the confidentiality of this information by refraining from using, disclosing, publishing or divulging the information to any third-party without our consent, and by employing no less stringent procedures than the strictest procedures used to protect its own confidential information.

What are examples of PowerPlan's confidential information and trade secrets?

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PowerPlan's intellectual property includes the confidential and proprietary information and trade secrets embodied within our unique and sophisticated software solutions. This includes our source code, system and database architecture, database models and structures, and various unique and integrated features and functions thereof. Our confidential information also includes user guides and other documentation, professional services deliverables, information relating to our software design sessions and workshops, and our training classes and materials.

These examples fall within the definition of confidential information in the License Agreement. They also meet the statutory definition of a trade secret, because they are: (i) not generally known by or available to the public; (ii) provide competitive economic value to PowerPlan; and (iii) are the subject of reasonable efforts to maintain their secrecy.

What actions amount to disclosure of or providing access to PowerPlan's confidential information?

Among the information and access that you should not provide to Lucasys are the following: (i) front-end user access to PowerPlan's software; (ii) access to your PowerPlan database (whether by a link or credentialed login access provided by you), or to PowerPlan's data model; (iii) user guides and other PowerPlan software documentation; (iv) access to Social Power and other PowerPlan user community sites; (v) professional services deliverables and other project work product; and (vi) invitations or participation in design sessions, software testing, user training, and other project meetings or workshops relating to PowerPlan software.

Does this letter apply to other third-party access to PowerPlan's confidential information?

The License Agreements requires that you obtain our consent prior to disclosing our confidential information to third parties. In the future, you will receive an additional communication from a vendor that PowerPlan has engaged to perform a generalized customer audit of third-party access to PowerPlan's software and associated confidential information. We would appreciate your cooperation in responding to that communication.

Final points

This confirms our expectation that Suez Water and its affiliates will cease providing Lucasys with access to our software, including the database architecture and data model, and other confidential information. If you have any questions regarding this matter, please contact PowerPlan by sending an email to Legal@pwrplan.com with the **Subject: Protecting PowerPlan Proprietary Software** and provide the relevant details. We will respond as soon as possible to discuss how to address the situation without disrupting your operations or ongoing projects.

Once again, thank you for your investment with PowerPlan and for your partnership in protecting PowerPlan's confidential information.

Sincerely,

Brett Bertz
Chief Customer Officer

Cc: Jonathan Sucher, Senior Corporate Counsel

Message

From: jdahlby@pwrplan.com [jdahlby@pwrplan.com]
 Sent: 6/6/2020 9:20:35 AM
 To: Jon Joury [jjoury@pwrplan.com]
 BCC: Lydia Olu-Harding [lydia.olu-harding@powerplan.com]
 Subject: Re: Suez Update

I was expecting a lot smaller \$ given scenario and politics.

Is there alternative approaches to focus on work tasks and leverage the MS team to help with continuous support?

Jim Dahlby

(m) +1.678.269.7950

Sent from mobile device.

On Jun 5, 2020, at 7:56 PM, Jon Joury <jjoury@pwrplan.com> wrote:

All,

Attached is SOW and PS Estimate. Will need to review with some others in PS on Monday. I put an area for what I assumed managed services would do. It is probably a little high of an estimate but I would rather be conservative and pare down after we talk with Client and internally. Plus we have risk of not knowing their design documents. Please let me know your thoughts.

1. Lydia – if you can make sure legal and finance is aware this is coming Monday/Tuesday and help them mark it as urgent. If you can also make sure legal is prepared to do whatever it needs to for ensuring the contract refers to this Client as SUEZ and not United Water as that will be a sticking point as well.
2. They had a comment about Lucasys executing all testing for all phases which seems very odd. For now I assumed we make scripts and plan and they would execute testing for the three cycles. Anthony/Lydia – can one of you reach out to them and confirm their request around the three cycles and ask how long they expect each cycle to last? I assumed 3-4 weeks each.
3. If they want a “not to exceed” in there, we will probably need to add 20% and say NTE the estimate + 20% or something along those lines.
4. Once we align on managed services scope I can take it from there the rest of the way. Will need a deal review as well.

Jon Joury

Director, Professional Services

Mobile: +1 404 928 6687
Jon.Joury@powerplan.com

<image001.png>

From: Anthony Beckett <abeckett@powerplan.com>

Sent: Friday, June 5, 2020 6:16 PM

To: Lydia Olu-Harding <lydia.olu-harding@powerplan.com>; Manan Jani <Manan.Jani@powerplan.com>; Ann Owolabi



<Ann.Owolabi@powerplan.com>; Jon Joury <jjoury@pwrplan.com>

Cc: Jim Dahlby <jdahlby@pwrplan.com>; Brett Bertz <brett.bertz@powerplan.com>; Skip Fowler

<Skip.Fowler@powerplan.com>; Joel McManness <jmcmanness@pwrplan.com>

Subject: RE: Suez Update

Hi Lydia,

Did my best to mimic the previous opportunity but I imagine I will need to edit based on the requirements from the team. Here is the lync:

<https://powerplan.my.salesforce.com/0060d00001w3Uf9>

Happy to adjust as needed but wanted to get it entered ASAP given our timeline.

Thanks,

Anthony Beckett

Customer Success Manager

Mobile: (678) 736-1717

abeckett@powerplan.com

PowerPlan.com

<image005.png>

From: Lydia Olu-Harding <lydia.olu-harding@powerplan.com>

Sent: Friday, June 05, 2020 6:05 PM

To: Manan Jani <Manan.Jani@powerplan.com>; Ann Owolabi <Ann.Owolabi@powerplan.com>; Jon Joury

<jjoury@pwrplan.com>

Cc: Anthony Beckett <abeckett@powerplan.com>; Jim Dahlby <jdahlby@pwrplan.com>; Brett Bertz

<brett.bertz@powerplan.com>; Skip Fowler <Skip.Fowler@powerplan.com>; Joel McManness

<jmcmanness@pwrplan.com>

Subject: Suez Update

Hey Team –

Our call with Suez team this afternoon to further communicate our position went more positive than I imagined. Rally appreciates the effort we are making and continues to emphasize the extreme risk position they are in as a company with the project and their other contracted parties involved that are on hold (Oracle and Peoplesoft teams). They are at risk of losing the assigned resources, etc that I know all of us can understand being in the consulting business. That said, when asked what we can continue to do as a partner to alleviate the path forward- **Rally and team have asked for an SOW by end of day Tuesday**. Rally did express that they own the rights to the design documents and will share those with us when we are under agreement. He understands there will be risk to us in putting this proposal together and expects to see some of that highlighted in assumptions. Here is my proposed path to getting to that:

End of Day Monday: PowerPlan internal check in point on evaluation of the information we have to date. (Meeting is coming)

- Breakdown of the build requirements for the project:
- o Detail of what is covered under Managed Services standard entitlement
- o Detail of what we will cover under Managed Services for good faith that would typically be services
- o Detail of what is additional services cost

By Noon on Tuesday: SOW drafted and in contracts hand to return a final copy to us

Tuesday 5PM: meeting with Suez team scheduled to hand over and review

Anthony is taking action to get the SF opportunity created.

Manan and Ann met this afternoon to connect to the system and do a deeper review to reach the above detail.

Ask to all of you: what do you need from me or any of the other leaders CC'd here to accomplish this ask? I will move what I need to move on my calendar to facilitate the need.

Details we heard on the call for record keeping:

- Go live plan is October 2020
- Their Oracle SI is owning getting the data in to the PowerPlan API format & taking the outbound format as standard from Post. No additional translation required
- If there are things we can highlight as "not critical" for go live but nice to have, those would be good to highlight as levers we can pull that impact their timeline. (ie: clean up of reports.. not really necessary and could be done after under MS hours)
- Looking for a "not to exceed" limit in the agreement (I didn't commit to that, just what Rally asked)

Thanks,

Lydia Olu-Harding

Vice President, Support and Shared Services

Office: +1 678.223.2744

Mobile: +1 404.437.2541

lydia.olu-harding@powerplan.com

PowerPlan.com

<image006.png>

<Suez Project Portfolio Management Estimate.xlsx>

<SUEZ Project Portfolio Management SOW.docx>

Message

From: jdahlby@pwrplan.com [jdahlby@pwrplan.com]
Sent: 6/18/2020 10:26:43 PM
To: Joel McManness [jmcmanness@pwrplan.com]
Subject: Re: AEP and IP Protection

Please check with Jonathan if we need a specific letter for them.

Jim Dahlby

(m) +1.678.269.7950

Sent from mobile device.

On Jun 18, 2020, at 8:03 PM, Joel McManness <jmcmanness@pwrplan.com> wrote:

Brett -

Sure thing, I've add them to the next wave. Do we need to talk to them prior to sending the protection letters or do they just need to be sent the letters to initiate a conversation?

Thanks,

Joel McManness
Sr Manager, Managed Services

Office: +1 678 223 2820
Mobile: +1 913 526 2108
Joel.McManness@PowerPlan.com
PowerPlan.com

<image001.png>
[Link for Live Support](#)

From: Brett Bertz <brett.bertz@powerplan.com>
Sent: Thursday, June 18, 2020 7:17 PM
To: Joel McManness <jmcmanness@pwrplan.com>; John Ericson <jericson@pwrplan.com>; Jim Dahlby <jdahlby@pwrplan.com>
Cc: Lydia Olu-Harding <lydia.olu-harding@powerplan.com>
Subject: AEP and IP Protection

Joel, I think we have AEP designated as complete from notification of IP protection requirements with third parties in late 2019. We've yet to receive confirmation from AEP that they are following the requirements of our communication. Therefore could you please make the adjustment to add them into our next letter communication wave. Thanks

Brett M. Bertz
Chief Customer Officer

Office: +1 678.223.2762
Mobile: +1 678.643.2242
brett.bertz@powerplan.com
PowerPlan.com



<image004.png>

Case 1:20-cv-02987-AT Document 18-2 Filed 09/11/20 Page 1 of 3

EXHIBIT 1





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July 17, 2020

VIA EMAIL

American Electric Power Service Corporation

ATTN: Jeffrey W Hoersdig <jwhoersdig@aep.com>; James Llende <jxllende@aep.com>; Kevin D Keller <kdkeller@aep.com>; Anthony J Swaneck <ajswaneck@aep.com>

RE: Protecting PowerPlan Proprietary Software and Intellectual Property Rights

Dear Messrs. Hoersdig, Llende, Keller, and Swaneck:

Thank you for being a valued customer and partner of PowerPlan. In the spirit of this partnership, I am writing to again raise a concern that PowerPlan has about access to our software and associated intellectual property by a specific third-party: Lucasys Inc. Lucasys offers consulting services associated with PowerPlan software and software solutions that compete with PowerPlan software. To protect our intellectual property, including trade secrets, we cannot permit our customers to provide Lucasys with access to our proprietary software and associated confidential information while Lucasys is simultaneously developing, marketing, and selling competitive software to those same customers. This would create an intolerable risk that Lucasys will misuse and misappropriate our confidential information and unfairly use it to develop, market, and sell its competing software.

PowerPlan is proactively alerting our customers about this intellectual property protection concern to help avoid a potentially compromising situation. Our software license and subscription agreements require that AEP obtain our consent prior to disclosing our confidential information to third parties. Please be advised that, pursuant to those provisions, **PowerPlan does not consent to Lucasys having access to our software or associated confidential information.**

PowerPlan consent is not required for AEP to retain Lucasys for projects that will not involve access to, disclosure of, or working with PowerPlan software, data models, or other confidential information. Additionally, PowerPlan consent is not required for AEP to provide their data, in raw form, to Lucasys, as long as it is done in a way that does not involve Lucasys accessing PowerPlan's software, data models or schema, including the underlying database, to retrieve such data.

The remainder of this letter provides answers to certain questions that you may have relating to what your contract with PowerPlan says about confidential information, and the scope of PowerPlan's confidential and proprietary information.

What does my contract with PowerPlan say about confidential information?

To protect and preserve our intellectual property, including trade secrets, we take reasonable steps to maintain the confidentiality of our software and associated information. The PowerPlant System Perpetual Licensing Agreement between our companies (the "License Agreement") includes provisions in Article 14 in which you acknowledge PowerPlan's proprietary rights in and to its software, including computer programs, manuals and supporting materials, and agree to maintain the confidentiality of this information by refraining from using, disclosing, publishing or divulging the information to any third-party without our consent, and by employing no less stringent procedures than the strictest procedures used to protect its own confidential information.

What are examples of PowerPlan's confidential information and trade secrets?

PowerPlan's intellectual property includes the confidential and proprietary information and trade secrets embodied within our unique and sophisticated software solutions. This includes our source code, system and database architecture, database models and structures, and various unique and integrated features and functions thereof. Our confidential

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information also includes user guides and other documentation, professional services deliverables, information relating to our software design sessions and workshops, and our training classes and materials.

These examples fall within the definition of confidential information in our license and subscription agreements. They also meet the statutory definition of a trade secret, because they are: (i) not generally known by or available to the public; (ii) provide competitive economic value to PowerPlan; and (iii) are the subject of reasonable efforts to maintain their secrecy.

What actions amount to disclosure of or providing access to PowerPlan's confidential information?

Among the information and access that our customers should not provide to Lucasys are the following: (i) front-end user access to PowerPlan's software; (ii) access to your PowerPlan database (whether by a link or credentialed login access provided by you), or to PowerPlan's data model; (iii) user guides and other PowerPlan software documentation; (iv) access to Social Power and other PowerPlan user community sites; (v) professional services deliverables and other project work product; and (vi) invitations or participation in design sessions, software testing, user training, and other project meetings or workshops relating to PowerPlan software.

Does this letter apply to other third-party access to PowerPlan's confidential information?

The License Agreement requires that you obtain our consent prior to disclosing our confidential information to third parties. In the future, you will receive an additional communication from a vendor that PowerPlan has engaged to perform a generalized customer audit of third-party access to PowerPlan's software and associated confidential information. We would appreciate your cooperation in responding to that communication.

Final points

PowerPlan requests that AEP and its affiliates confirm in writing that no access is currently being provided to Lucasys to PowerPlan's software, including the database architecture and data model, and other confidential information. PowerPlan also requests that AEP and its affiliates ensure that Lucasys is not provided with such access in the future. Please provide a response to confirm PowerPlan's requests or submit any questions regarding this matter via email to Legal@pwrplan.com with the **Subject: Protecting PowerPlan Proprietary Software**. PowerPlan will respond as soon as possible to assist in resolving this matter.

Once again, thank you for your investment with PowerPlan and for your partnership in protecting PowerPlan's confidential information.

Sincerely,

Brett Bertz
Chief Customer Officer

Cc: Jonathan Sucher, Associate General Counsel

Message

From: jdahlby@pwrplan.com [jdahlby@pwrplan.com]
Sent: 6/22/2020 10:22:31 AM
To: Joel McManness [jmcmanness@pwrplan.com]
CC: Jonathan Sucher [jonathan.sucher@powerplan.com]
Subject: Re: Seminole IP Protection Letter

I forgot they are cloud, I'm good with Kevin's recommendation

Jim Dahlby

(m) +1.678.269.7950

Sent from mobile device.

On Jun 22, 2020, at 8:44 AM, Joel McManness <jmcmanness@pwrplan.com> wrote:

Hey Jim –

I saw a note Kevin M made on Seminole that they are cloud deployment and don't need the IP protection phone call. Is there a 3rd party currently operating out there or another reason we need to be sensitive with this account?

Thanks,

Joel McManness
Sr Manager, Managed Services

Office: +1 678 223 2820
Mobile: +1 913 526 2108
Joel.McManness@PowerPlan.com
PowerPlan.com

<image001.png>
[Link for Live Support](#)



4143	RELOS387160	10/5/2021 21:10	Jim Dahlby [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D216F1B123C546B280D24L68D8718750-JIM DAHLBY]	Jonathan Sucher [jonathan.sucher@powerplan.com]		Re: Trade Secrets Identification kick-off
4144	RELOS410490	10/6/2021 5:28	Jonathan Sucher [jonathan.sucher@powerplan.com]	Jim Dahlby [jdahlby@powerplan.com]		Re: Trade Secrets Identification kick-off



**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

LUCASYS INC.,

Plaintiff and Counterclaim Defendant,

v.

POWERPLAN, INC.,

Defendant and Counterclaim Plaintiff.

Civil Action No.: 1:20-CV-02987-AT

Judge Amy Totenberg

JURY TRIAL DEMANDED

ANSWER TO A COMPLAINT AND COUNTERCLAIMS

Defendant and Counterclaim Plaintiff PowerPlan, Inc. ("PowerPlan") hereby answers Plaintiff and Counterclaim Defendant Lucasys Inc.'s ("Lucasys") Complaint (ECF No. 1). Except as expressly admitted below, PowerPlan denies all allegations contained in the Complaint, and denies that Lucasys is entitled to any form of relief. PowerPlan reserves all its rights to alter, amend, or supplement this answer, or to otherwise assert additional defenses and counterclaims, as discovery proceeds. PowerPlan's Answer to the numbered paragraphs of Lucasys' Complaint are set forth below¹:

1. PowerPlan admits the allegations in paragraph 1 of the Complaint.

¹ Lucasys' Complaint includes more than two pages of improper and argumentative narrative and mischaracterizations in a section entitled "Nature of the Action" appearing before its "Substantive Allegations." To the extent that any response is required here to this improper narrative, PowerPlan denies the allegations and characterizations contained there.



8. PowerPlan admits only that the allegations in paragraph 8 of the Complaint describe certain, but not all, products offered by PowerPlan. PowerPlan denies the remaining allegations in paragraph 8 of the Complaint.

9. PowerPlan admits that PowerTax, Provision, and Tax Repairs are part of its Income Tax Suite. PowerPlan admits that its income tax related modules allow its customers to compute tax depreciation and deferred income taxes. PowerPlan denies the remaining allegations in paragraph 9 of the Complaint.

10. PowerPlan admits the allegations in paragraph 10 of the Complaint.

11. PowerPlan admits that some of its software was available in the market in 1994 and thereafter. PowerPlan denies the remaining allegations in paragraph 11 of the Complaint.

12. PowerPlan lacks information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Complaint, accordingly they are denied.

13. PowerPlan denies the allegations in paragraph 13 of the Complaint.

14. PowerPlan denies the allegations in paragraph 14 of the Complaint.

15. PowerPlan admits only that customers wishing to perform functions that are outside of the capability of PowerPlan's software can use alternative service providers. PowerPlan denies the remaining allegations in paragraph 15 of the Complaint.

16. PowerPlan denies the allegations in paragraph 16 of the Complaint.

24. PowerPlan admits only that certain of its clients have requested assistance with calculations associated with various tax law changes. PowerPlan denies the remaining allegations in paragraph 24 of the Complaint.

25. PowerPlan admits only that Lucasys and numerous others provide various tax related consulting. PowerPlan denies the remaining allegations in paragraph 25 of the Complaint.

26. PowerPlan admits that it competes with other providers of services concerning deferred taxes. PowerPlan denies all remaining allegations in paragraph 26 of the Complaint.

27. PowerPlan admits that Vadim Lantukh, Daniel Chang, and Stephen Strang are former PowerPlan employees whose employment with PowerPlan ended in 2013 (Lantukh), 2014 (Chang), and 2015 (Strang). PowerPlan also admits that each held employment somewhere other than PowerPlan prior to joining Lucasys. PowerPlan denies the remaining allegations in paragraph 27 of the Complaint.

28. PowerPlan lacks information sufficient to form a belief as to the reasons for Lucasys' founding and on that basis denies same. PowerPlan denies the remaining allegations in paragraph 28 of the Complaint.

29. PowerPlan is without information sufficient to form a belief as to the truth of the allegations in paragraph 29 of the Complaint, accordingly they are denied.

33. PowerPlan denies the allegations in paragraph 33 of the Complaint.

34. PowerPlan denies the allegations in paragraph 34 of the Complaint.

35. PowerPlan admits that it learned that Lucasys responded to a request for proposal issued by AEP. PowerPlan denies the remaining allegations in paragraph 35 of the Complaint.

36. PowerPlan admits that both PowerPlan and Lucasys submitted bids for at least a portion of the work requested by AEP. PowerPlan also admits that it has had communications with AEP regarding PowerPlan's confidential information and the confidentiality obligations under its existing license agreement with PowerPlan. PowerPlan denies the remaining allegations in paragraph 36 of the Complaint.

37. PowerPlan denies the allegations in paragraph 37 of the Complaint.

38. PowerPlan admits only that it sent correspondence to Messrs. Lantukh, Chang and Strang on or about October 30, 2019, which speaks for itself. PowerPlan denies the remaining allegations in paragraph 38 of the Complaint.

39. PowerPlan admits only that it sent correspondence to Messrs. Lantukh, Chang and Strang on or about October 30, 2019, which speaks for itself. PowerPlan denies the remaining allegations in paragraph 39 of the Complaint.

40. PowerPlan denies the allegations in paragraph 40 of the Complaint.

49. PowerPlan admits only that it performed certain services for NextEra at various times and at the request of NextEra. PowerPlan is without information sufficient to form a belief as to the remaining allegations in paragraph 49 of the Complaint, accordingly they are denied.

50. PowerPlan admits only that Lucasys proposed to provide certain services to Liberty Utilities and that Lucasys recommended Liberty Utilities implement PowerPlan's income tax suite. PowerPlan denies the remaining allegations in paragraph 50 of the Complaint.

51. PowerPlan denies the allegations in paragraph 51 of the Complaint.

52. PowerPlan denies the allegations in paragraph 52 of the Complaint.

53. PowerPlan admits that in 2019, AEP issued a request for proposals. PowerPlan also admits that both PowerPlan and Lucasys submitted bids for at least a portion of the work requested by AEP. PowerPlan lacks information sufficient to form a belief as to the truth of the remaining allegations in paragraph 53 of the Complaint, accordingly they are denied.

54. PowerPlan admits that it sent certain correspondence to its client AEP, which speaks for itself. PowerPlan lacks information sufficient to form a belief as to the allegations concerning Lucasys' communications with AEP and on that basis denies same. PowerPlan denies the remaining allegations in paragraph 54 of the Complaint.

65. PowerPlan admits only that investor-owned rate-regulated utilities sometimes use software systems and that such systems can facilitate certain operational, accounting, regulatory, and tax functions. PowerPlan denies the remaining allegations in paragraph 65 of the Complaint.

66. PowerPlan admits only that rate-regulated utilities are regulated and asset intensive. PowerPlan denies the remaining allegations in paragraph 66 of the Complaint.

67. PowerPlan admits that there are certain investor-owned rate-regulated utilities that operate without the use of what the Complaint calls “Utility Management Software.” PowerPlan denies the remaining allegations in paragraph 67 of the Complaint.

68. PowerPlan denies the allegations in paragraph 68 of the Complaint.

69. PowerPlan denies the allegations in paragraph 69 of the Complaint.

70. PowerPlan is without information sufficient to form a belief as to costs allegedly associated with switching to a system that Lucasys simultaneously alleges does not exist. Accordingly, PowerPlan denies the allegations in paragraph 70 of the Complaint.

71. PowerPlan denies the allegations in paragraph 71 of the Complaint.

72. PowerPlan denies the allegations in paragraph 72 of the Complaint.

73. PowerPlan denies the allegations in paragraph 73 of the Complaint.

86. PowerPlan denies the allegations in paragraph 86 of the Complaint.

87. PowerPlan denies the allegations in paragraph 87 of the Complaint.

88. PowerPlan denies the allegations in paragraph 88 of the Complaint.

89. PowerPlan denies the allegations in paragraph 89 of the Complaint.

90. PowerPlan denies it engaged in any improper anticompetitive conduct or that any alleged anticompetitive conduct affected interstate commerce. PowerPlan also denies that it has revenues in excess of \$150 million annually. PowerPlan lacks information sufficient to form a belief as to the truth of the remaining allegations in paragraph 90 of the Complaint, accordingly they are denied.

91. PowerPlan admits that AEP operates in multiple states. PowerPlan denies the remaining allegations in paragraph 91 of the Complaint.

92. PowerPlan incorporates by reference the preceding responses to Lucasys' allegations.

93. PowerPlan denies the allegations in paragraph 93 of the Complaint.

94. PowerPlan admits only that development of a full suite software product of the scope of PowerPlan's software offering requires significant technological ability and any effort to organically develop such a software offering without access to PowerPlan's trade secrets would require a major capital investment and substantial time. PowerPlan denies the remaining allegations in paragraph 94 of the Complaint.

107. PowerPlan denies the allegations in paragraph 107 of the Complaint.

108. PowerPlan denies the allegations in paragraph 108 of the Complaint.

109. PowerPlan denies the allegations in paragraph 109 of the Complaint.

110. PowerPlan denies the allegations in paragraph 110 of the Complaint.

111. PowerPlan denies the allegations in paragraph 111 of the Complaint.

112. PowerPlan incorporates by reference the preceding responses to Lucasys' allegations.

113. PowerPlan admits only that there is existing choice available from different suppliers. PowerPlan denies the remaining allegations in paragraph 113 of the Complaint.

114. PowerPlan denies the allegations in paragraph 114 of the Complaint.

115. PowerPlan denies the allegations in paragraph 115 of the Complaint.

116. PowerPlan denies the allegations in paragraph 116 of the Complaint.

117. PowerPlan denies the allegations in paragraph 117 of the Complaint.

118. PowerPlan denies the allegations in paragraph 118 of the Complaint.

119. PowerPlan incorporates by reference the preceding responses to Lucasys' allegations.

120. PowerPlan denies the allegations in paragraph 120 of the Complaint.

121. PowerPlan denies the allegations in paragraph 121 of the Complaint.

122. PowerPlan denies the allegations in paragraph 122 of the Complaint.

139. PowerPlan denies the allegations in paragraph 139 of the Complaint.

140. PowerPlan incorporates by reference the preceding responses to Lucasys' allegations.

141. PowerPlan denies the allegations in paragraph 141 of the Complaint.

142. PowerPlan denies the allegations in paragraph 142 of the Complaint.

143. PowerPlan denies the allegations in paragraph 143 of the Complaint.

144. PowerPlan denies the allegations in paragraph 144 of the Complaint.

145. PowerPlan denies the allegations in paragraph 145 of the Complaint.

146. PowerPlan incorporates by reference the preceding responses to Lucasys' allegations.

147. PowerPlan denies the allegations in paragraph 147 of the Complaint.

148. PowerPlan denies the allegations in paragraph 148 of the Complaint.

149. PowerPlan denies the allegations in paragraph 149 of the Complaint.

150. PowerPlan denies the allegations in paragraph 150 of the Complaint.

151. PowerPlan incorporates by reference the preceding responses to Lucasys' allegations.

152. PowerPlan denies the allegations in paragraph 152 of the Complaint.

153. PowerPlan denies the allegations in paragraph 153 of the Complaint.

154. PowerPlan denies the allegations in paragraph 154 of the Complaint.

155. PowerPlan denies the allegations in paragraph 155 of the Complaint.

SECOND ADDITIONAL DEFENSE

2. The Complaint and every claim for relief asserted therein fails to state a claim upon which relief can be granted against PowerPlan.

THIRD ADDITIONAL DEFENSE

3. Lucasys' claims are barred, in whole or in part, because there has been no injury to competition as a result of the conduct attributed to PowerPlan.

FOURTH ADDITIONAL DEFENSE

4. Lucasys' claims are barred, in whole or in part, because Lucasys has failed to define an appropriate relevant product market and/or geographic market under the antitrust laws.

FIFTH ADDITIONAL DEFENSE

5. PowerPlan's business practices were lawful, pro-competitive, increased efficiencies, and benefitted customers.

SIXTH ADDITIONAL DEFENSE

6. Lucasys' claims may be barred, in whole or in part, by the applicable statute of limitations and/or statute of repose.

SEVENTH ADDITIONAL DEFENSE

7. Lucasys' claims may be barred, in whole or in part, by the doctrines of laches, waiver and/or estoppel.

THIRTEENTH ADDITIONAL DEFENSE

13. Lucasys' Ninth and Tenth Causes of Action are barred, in whole or in part, because all purported statements made by PowerPlan regarding Lucasys, if any, are privileged under O.C.G.A. § 51-5-7(2) and (3).

FOURTEENTH ADDITIONAL DEFENSE

14. Lucasys' Ninth and Tenth Causes of Action are barred, in whole or in part, because all purported fact statements made by PowerPlan regarding Lucasys, if any, were true.

ADDITIONAL DEFENSES

By designating the aforementioned defenses, PowerPlan does not in any way waive or limit any defenses which are or may be raised by their denials, allegations, and averments. These defenses also are without prejudice to PowerPlan's ability to raise other and further defenses. PowerPlan expressly reserves all rights to re-evaluate its defenses and/or assert additional defenses upon any amendment of the underlying claims, and/or upon discovery and review of additional documents and information, and upon the development of other pertinent facts.

POWERPLAN'S COUNTERCLAIMS

PowerPlan states the following counterclaims against Lucasys for violations of the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836 (the "DTSA"),

disclosing, or permitting the unauthorized use or disclosure of, this PowerPlan proprietary information.

4. Lantukh, Chang, and Strang are the founders and main principals of Lucasys, which was formed to develop software, but which also has been providing consulting services to PowerPlan customers relating to their use of the PowerPlan Software, which has provided Lucasys with continued access to the proprietary elements of the PowerPlan Software—including but not limited to information embodied in PowerPlan’s proprietary Software architecture, databases and database models, unique functions and features, processes, methods, algorithms, and (potentially) source code—under confidentiality obligations.

5. Lucasys has attempted to market its own software products to the same customer base served by PowerPlan. On information and belief, Lucasys has misappropriated PowerPlan’s confidential and proprietary information and trade secrets—including but not limited to information embodied in PowerPlan’s proprietary Software architecture, databases and database models, unique functions and features, processes, methods, algorithms, and (potentially) source code—and misused and is continuing to misuse that information to design and develop Lucasys’ software. The details of such misappropriation is solely in the possession and control of Lucasys, and will be further elucidated by discovery.

Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, for misappropriation of trade secrets. This Court has pendent or supplemental jurisdiction over PowerPlan's remaining counterclaims pursuant to 28 U.S.C. § 1367.

10. This Court has personal jurisdiction over Lucasys because its principal place of business is within the judicial district for the United States District Court for the Northern District of Georgia.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) and (2) because Lucasys resides in this judicial district and a substantial part of the events giving rise to the claim occurred in this judicial district.

FACTUAL ALLEGATIONS

12. Through a substantial investment of time, effort, and money over the past 25 years, PowerPlan has developed valuable, unique, and sophisticated software and data systems solutions (i.e., the PowerPlan Software).

13. PowerPlan has developed, and continues to develop, upgrade, refine, and add functions and features to, the PowerPlan Software with its own software engineers at great cost to the company. Over the past 25 years, PowerPlan estimates that it has invested more than \$100 million in designing, developing, upgrading, and refining its PowerPlan Software.

14. The PowerPlan Software permits utilities, and other businesses operating in rate-regulated and asset-intensive industries, among others, to

integrated features and functions thereof, and the methods, processes, and algorithms used to carry them out are confidential and proprietary and embody trade secrets under federal and Georgia law.

18. The PowerPlan Software, and the systems and components included in the Software, derive economic value from not being generally known, and PowerPlan has taken reasonable measures to maintain their secrecy.

19. To maintain the secrecy of its confidential and proprietary information and trade secrets (“PowerPlan Protected Information”), PowerPlan takes a number of reasonable steps, which include but are not limited to the following:

- PowerPlan requires employees to sign employment agreements prohibiting use or disclosure of PowerPlan Protected Information outside of their employment with PowerPlan.
- PowerPlan has adopted employee handbooks with policies similarly prohibiting employees from using or disclosing PowerPlan Protected Information outside of their employment with PowerPlan.
- PowerPlan trains employees on protecting the confidential and proprietary nature of PowerPlan Protected Information.
- PowerPlan does not sell its PowerPlan Software to customers, but instead licenses the Software to customers pursuant to written license agreements in which the customer acknowledges PowerPlan’s

22. Lantukh was employed by PowerPlan from July 2007 through March 2013, as Manager of Software Implementation and later as Director of Professional Services.

23. In his positions with PowerPlan, Lantukh was responsible for successful customer implementation of PowerPlan Software solutions, and had intimate access to and worked with all aspects of PowerPlan's confidential and proprietary Software systems (including but not limited to the system architecture, databases, database models, features, functions, and source code). Lantukh worked closely with PowerPlan customers implementing and using the PowerPlan Software, including in connection with Software upgrades, restructurings, conversions, and interfacing with customer software solutions and data. To accomplish these tasks, Lantukh worked with PowerPlan Software developers and engineers, and had direct access to, among other things, the PowerPlan Software database models and structure, source code, and confidential customer information.

24. At all times, Lantukh's access to the PowerPlan Protected Information was subject to legal obligations to refrain from using or disclosing that information for any purpose other than PowerPlan business.

25. On July 2, 2007, Lantukh signed an Employment Agreement in which he agreed, among other things, to refrain from using, disclosing, or permitting any unauthorized person from using, disclosing, or gaining access to, any trade secrets

to all aspects of PowerPlan's confidential and proprietary Software systems (including but not limited to the system architecture, databases, database models, features, functions, processes, methods, algorithms and source code). Chang worked closely with PowerPlan customers implementing and using the PowerPlan Software, including in connection with Software upgrades, restructurings, conversions, and interfacing with customer software solutions and data. To accomplish these tasks, Chang worked with PowerPlan Software developers and engineers, and had direct access to the PowerPlan Software database models and structure, source code, and other PowerPlan Protected Information.

31. At all times, Chang's access to the PowerPlan Protected Information was subject to legal obligations to refrain from using or disclosing that information for any purpose other than PowerPlan business.

32. On June 26, 2009, Chang signed a Handbook Acknowledgment agreeing to comply with PowerPlan's employee handbook policies, which prohibited the disclosure of PowerPlan Protected Information during or after his employment other than for the benefit of PowerPlan.

33. On March 18, 2013, Chang executed an Employment Covenants Agreement agreeing that "both during and after Your employment with the Company," Chang would refrain from using, disclosing, or permitting any unauthorized person from using, disclosing, or gaining access to, any Protected

37. Strang worked for PowerPlan from January 2011 to September 2015, first as a Senior Consultant assisting customers in implementing and using the PowerPlan Software, and later in a managerial position.

38. In each of his positions with PowerPlan, Strang was responsible for customer implementation of PowerPlan Software solutions, and had intimate access to all aspects of PowerPlan's confidential and proprietary Software systems (including but not limited to the system architecture, databases, database models, features, functions, methods, processes, algorithms, and source code). Strang worked closely with PowerPlan customers implementing and using the PowerPlan Software, including in connection with Software upgrades, restructurings, conversions, and interfacing with customer software solutions and data. To accomplish these tasks, Strang worked with PowerPlan Software developers and engineers, and had direct access to the PowerPlan Software database model and structure, source code, and confidential customer information.

39. At all times, Strang's access to the foregoing PowerPlan Protected Information was subject to his legal obligations to refrain from using or disclosing that information for any purpose other than PowerPlan business.

40. On January 13, 2011, Strang signed a Handbook Acknowledgment agreeing to comply with PowerPlan's employee handbook policies, which

implementation and use of the PowerPlan Software, during which they have access to nearly all aspects of PowerPlan's Software, under confidentiality obligations that prohibit the misappropriation of PowerPlan Protected Information.

46. Because most of Lantukh's professional career has been spent accessing, modifying, implementing, and working with the PowerPlan Software, either as a PowerPlan employee or as a consultant servicing PowerPlan customers, it would be virtually impossible for him and Lucasys to design and develop the Lucasys Software without relying on confidential and proprietary aspects of the PowerPlan Software.

47. PowerPlan's concerns about Lucasys' use of PowerPlan's Protected Information have been exacerbated by Lucasys' hiring of former PowerPlan employees Chang as Chief Operating Officer (started working with Lucasys in July 2019), and Strang as Chief Technology Officer (started in August 2019), and its announcement that Chang is also a co-founder, with Lantukh, of Lucasys.

48. Lucasys has also contracted with yet another former PowerPlan employee Vu Nguyen—to become a Lucasys Implementation Partner. Nguyen was a PowerPlan employee who had access to and worked closely with PowerPlan's confidential and proprietary systems, including its database models and source code, and worked closely with PowerPlan customers in implementing the PowerPlan Software.

54. On information and belief, the Lucasys Software has been designed using and/or leveraging the confidential and trade secret information that Lucasys' principals and employees obtained by virtue of their prior PowerPlan employment and PowerPlan customer engagements, which were governed by confidentiality agreements requiring that PowerPlan's confidential and trade secret information be held in strict confidence. On information and belief, Lucasys has used, and is using, that confidential and trade secret information for unauthorized purposes and without the consent or permission of PowerPlan.

55. On information and belief, Lucasys is improperly, unlawfully, and unfairly using PowerPlan's Protected Information including but not limited to information embodied in PowerPlan's proprietary architecture, software, databases, database schema, and unique functions and features to, on information and belief, design, develop, and implement Lucasys' Software products.

56. On October 30, 2019, PowerPlan sent a letter to Lucasys demanding, among other things, that it:

- cease disclosing or using PowerPlan's Protected Information;
- return all Protected Information in its possession, and delete all such information from its systems; and
- cease designing, developing, selling, or marketing the Lucasys Software unless and until it can be independently verified that

62. PowerPlan's Protected Information, including information embodied in the PowerPlan Software (including but not limited to the Software architecture, databases, database models and structure, unique functions and features, methods, processes, algorithms, and source code) contain valuable trade secrets owned by PowerPlan.

63. PowerPlan's Protected Information contains trade secrets under the DTSA because it includes financial, business, technical, and engineering information, including formulas, designs, methods, techniques, processes, procedures, programs, and codes, that are not generally known to the public, for which PowerPlan takes measures that are reasonable under the circumstances to keep secret.

64. PowerPlan's Protected Information derives independent economic value from not being generally known to, and not being readily ascertainable through proper means by, persons or entities who can obtain economic value from the disclosure or use of the information.

65. On information and belief, Lucasys acquired PowerPlan's trade secrets from one or more of Lantukh, Chang, and Strang by improper means, knowing that these individuals acquired the trade secrets under circumstances giving rise to a duty to maintain the secrecy and limit the use of the trade secrets and/or while consulting

caused by the misappropriation and resulting unjust enrichment, pursuant to 18 U.S.C. § 1836(b)(3)(B) and (C).

70. Lucasys' actions have been intentional and were meant to cause harm to PowerPlan, entitling PowerPlan to recover an award of costs and reasonable attorneys' fees incurred by PowerPlan in this action pursuant to 18 U.S.C. § 1836(b)(3)(D).

COUNT TWO

Violation of the Georgia Trade Secrets Act – O.C.G.A. § 10-1-760

71. PowerPlan alleges and incorporates the allegations contained in paragraphs 1–70 as if fully set forth here.

72. PowerPlan's Protected Information, including information embodied in the PowerPlan Software (including but not limited to the Software architecture, databases, database models and structure, unique functions and features, and source code) contains valuable trade secrets owned by PowerPlan.

73. PowerPlan's Protected Information contains trade secrets under the GTSA because it includes financial, business, technical, and engineering information, including formulas, designs, methods, techniques, processes, procedures, programs, and codes that are not commonly known to the public, for which PowerPlan takes reasonable measures to keep secret.

74. PowerPlan's Protected Information derives independent economic value from not being generally known to, and not being readily ascertainable through

79. As a result of Lucasys' actual and threatened misappropriation of PowerPlan's trade secrets, PowerPlan is suffering irreparable harm. Without permanent injunctive relief awarded pursuant to O.C.G.A. § 10-1-762, PowerPlan will continue to sustain irreparable harm for which there is no adequate remedy at law.

80. PowerPlan is likewise entitled to an award of damages under O.C.G.A. § 10-1-763(a), including damages sustained from Lucasys' misappropriation of PowerPlan's trade secrets, or the actual loss to PowerPlan plus the unjust enrichment to Lucasys, for the misappropriation.

81. Lucasys' actions have been intentional and were meant to cause harm to PowerPlan, entitling PowerPlan under O.C.G.A. § 10-1-763(b) to recover exemplary damages in an amount not exceeding twice any award made under O.C.G.A. § 10-1-763(a), and to recover attorneys' fees under O.C.G.A. § 10-1-764.

COUNT THREE

Unfair Competition

82. PowerPlan alleges and incorporates the allegations contained in paragraphs 1-81 as if fully set forth here.

83. Lucasys' misconduct alleged herein, including but not limited to its misappropriation of PowerPlan trade secrets and breaches of obligations owed under confidentiality and non-disclosure agreements, amounts to unfair competition prohibited by Georgia common law.

b. Granting to PowerPlan permanent injunctive relief enjoining Lucasys, and all those acting directly or indirectly in concert or participation with it, as follows:

- i. Enjoining all disclosure or use of PowerPlan's Protected Information, including but not limited to disclosure or use of the PowerPlan Software and PowerPlan's proprietary customer and pricing information;
- ii. Requiring Lucasys and all those acting in concert or participation with Lucasys to return to PowerPlan all PowerPlan Protected Information in their possession, custody or control, and to destroy or delete all information from their computers, systems, and devices;
- iii. Enjoining the further design, development, marketing, or sale or efforts to sell the Lucasys Software unless and until it can be independently verified that Lucasys designed, developed, and is able to market and sell the Software without use of PowerPlan's Protected Information;

c. Award compensatory and actual damages against Lucasys, in an amount to be determined at trial, including all damages (including unjust enrichment damages) authorized under 18 U.S.C. § 1836(h)(3)(B) and O.C.G.A. § 10-1-763(a);

Submitted this 14th day of October, 2021

Respectfully submitted,

/s/ Damond R. Mace

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*Attorneys for Defendant and Counterclaim
Plaintiff PowerPlan, Inc.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

LUCASYS INC.,

*Plaintiff and
Counterclaim Defendant,*

v.

POWERPLAN, INC.,

*Defendant and
Counterclaim Plaintiff.*

Civil Action No. 1:20-cv-2987-AT

Judge Amy Totenberg

**POWERPLAN, INC.'S RESPONSES TO LUCASYS INC.'S FIRST SET OF
INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, PowerPlan, Inc. ("PowerPlan") hereby responds and objects to Lucasys Inc.'s ("Lucasys") First Set of Interrogatories as follows:

INTERROGATORY NO. 1:

Identify all persons associated with PowerPlan (including but not limited to current and former officers and employees) who have communicated about Lucasys, and provide the date, recipients, and substance of the communications.

RESPONSE TO INTERROGATORY NO. 1:

PowerPlan objects to Interrogatory No. 1 (i) as it is vague and indefinite in its use of the phrase "communicated about Lucasys"; (ii) as it is unduly burdensome and not proportional to the needs of the case insofar as it demands that PowerPlan



summarize all communications over a nearly two year period; and *(iii)* to the extent it calls for disclosure of any privileged or protected communications. Without waiving its objections, PowerPlan states that the answer to Interrogatory No. 1 can be determined by examination of business records to be produced in response to Lucasys' Requests for the Production of Documents and that the burden of determining the answer to Interrogatory No. 1 will be substantially the same for either party. PowerPlan refers Lucasys to the documents being produced.

INTERROGATORY NO. 2:

Identify all persons associated with PowerPlan (including but not limited to current and former officers and employees) who have communicated about companies competing with, or potentially competing with, PowerPlan, and provide the date, recipients, and substance of the communications.

RESPONSE TO INTERROGATORY NO. 2:

PowerPlan objects to Interrogatory No. 2 *(i)* as it is vague and indefinite in its use of the phrase "communicated about companies competing with, or potentially competing with. PowerPlan"; *(ii)* as it is unduly burdensome and not proportional to the needs of the case insofar as it demands that PowerPlan summarize all communications over an indefinite period; and *(iii)* to the extent it calls for disclosure of any privileged or protected communications. Without waiving its objections,

PowerPlan states that the answer to Interrogatory No. 2 can be determined by examination of business records to be produced in response to Lucasys' Requests for the Production of Documents and that the burden of determining the answer to Interrogatory No. 2 will be substantially the same for either party. PowerPlan refers Lucasys to the documents being produced.

INTERROGATORY NO. 3:

Identify all communications that evidence concerns or complaints about PowerPlan's software, and provide the date, recipients, and substance of the communications.

RESPONSE TO INTERROGATORY NO. 3:

PowerPlan objects to Interrogatory No. 3 as it is (i) vague and indefinite in its use of the phrase "concerns" and (ii) unduly burdensome and not proportional to the needs of the case insofar as it demands that PowerPlan summarize all communications over an indefinite period. Without waiving its objections, PowerPlan states that the answer to Interrogatory No. 3 can be determined by examination of business records to be produced in response to Lucasys' Requests for the Production of Documents and that the burden of determining the answer to Interrogatory No. 3 will be substantially the same for either party. PowerPlan refers Lucasys to the documents being produced.

INTERROGATORY NO. 4:

Identify all communications that evidence compliments about PowerPlan's software, and provide the date, recipients, and substance of the communications.

RESPONSE TO INTERROGATORY NO. 4:

PowerPlan objects to Interrogatory No. 4 as it is (i) vague and indefinite in its use of the phrase "compliments" and (ii) unduly burdensome and not proportional to the needs of the case insofar as it demands that PowerPlan summarize all communications over an indefinite period. Without waiving its objections, PowerPlan states that the answer to Interrogatory No. 4 can be determined by examination of business records to be produced in response to Lucasys' Requests for the Production of Documents and that the burden of determining the answer to Interrogatory No. 4 will be substantially the same for either party. PowerPlan refers Lucasys to the documents being produced.

INTERROGATORY NO. 5:

Identify all persons who PowerPlan believes may have knowledge about quality issues with PowerPlan's software.

RESPONSE TO INTERROGATORY NO. 5:

PowerPlan incorporates by reference its objections and responses to Interrogatory Nos. 3 and 4. PowerPlan further objects to Interrogatory No. 5 as the

reference to “quality issues” is vague, undefined, and subject to multiple reasonable interpretations. Without waiving its objections, concerns regarding PowerPlan Software may be communicated to PowerPlan in multiple ways. PowerPlan’s Services, Sales, and Product Management groups may receive information concerning software quality. The Services function is currently led by Brett Bertz, Chief Customer Officer. Sales is currently led by Marc Bortniker, Senior Vice President of Global Sales. Product Management is currently led by Suzanne Ward, Senior Vice President, Product Management.

INTERROGATORY NO. 6:

Identify all communications related to PowerPlan or other companies potentially providing, or providing, Supplemental Management Services to PowerPlan’s customers, and provide the date, recipients, and substance of the communications.

RESPONSE TO INTERROGATORY NO. 6:

PowerPlan objects to Interrogatory No. 6 as it is unduly burdensome and not proportional to the needs of the case insofar as it demands that PowerPlan summarize all communications over an indefinite period. PowerPlan further objects to Lucasys’ definition of “Supplemental Management Services,” which PowerPlan does not adopt for any purpose other than its response to Interrogatory No. 6. Without

waiving its objections, PowerPlan states that the answer to Interrogatory No. 6 can be determined by examination of business records to be produced in response to Lucasys' Requests for the Production of Documents and that the burden of determining the answer to Interrogatory No. 6 will be substantially the same for either party. PowerPlan refers Lucasys to the documents being produced.

INTERROGATORY NO. 7:

Identify all communications related to PowerPlan withholding consent for a person or company to access PowerPlan's software and purported confidential information, as PowerPlan asserts it can do in the July 17, 2020 letter from PowerPlan to American Electric Power Service Corporation, and provide the date, recipients, and substance of the communications.

RESPONSE TO INTERROGATORY NO. 7:

PowerPlan objects to Interrogatory No. 7 as it is (i) vague and indefinite in its use of the phrase "access PowerPlan's software and purported confidential information" and (ii) unduly burdensome and not proportional to the needs of the case insofar as it demands that PowerPlan summarize all communications over an indefinite period. Without waiving its objections, PowerPlan states that the answer to Interrogatory No. 7 can be determined by examination of business records to be produced in response to Lucasys' Requests for the Production of Documents and

that the burden of determining the answer to Interrogatory No. 7 will be substantially the same for either party. PowerPlan refers Lucasys to the documents being produced.

INTERROGATORY NO. 8:

Identify with specificity all trade secrets, confidential information, proprietary information, and protected information (as set forth in the October 30, 2019 letter from Mark S. VanderBroek (prior counsel for PowerPlan) to Lantukh, Chang and Strang (“2019 Letter”)), that you contend Lucasys, Vadim Lantukh (“Lantukh”), Daniel Chang (“Chang”), or Stephen Strang (“Strang”) have misappropriated from PowerPlan.

RESPONSE TO INTERROGATORY NO. 8:

PowerPlan objects to Interrogatory No. 8 to the extent it seeks information that is protected by the attorney work product doctrine and/or attorney client privilege. Without waiving its objections, PowerPlan states that the trade secrets, confidential information, proprietary information and protected information set forth in the October 30, 2019 letter that PowerPlan contends Lucasys has misappropriated include PowerPlan’s unique software solutions, including its source code, system and database architecture, database tables and their structure, database model and schema, algorithms, numerous unique and integrated features, functions, and

components thereof, the methods and processes for carrying out those features and functions, the relationship of the various components to one another, and its manuals, user guides and software documentation. PowerPlan's investigation is continuing and it reserves the right to amend or supplement this response as Lucasys provides information relating to its activities. In addition, this response may be supplemented by expert testimony at the appropriate time in the case.

INTERROGATORY NO. 9:

Identify in detail the specifics of the "proprietary knowledge" that is referenced in a May 4, 2020 letter from its counsel Mark S. VanderBroek to Jason S. Alloy ("2020 Letter") that "Lucasys and its principals are making unauthorized use of their proprietary knowledge of PowerPlan's database model to design and develop competing Lucasys software modules to directly integrate and work with PowerPlan's software and databases."

RESPONSE TO INTERROGATORY NO. 9:

PowerPlan objects to Interrogatory No. 9 to the extent it seeks information that is protected by the attorney work product doctrine and/or attorney client privilege. Without waiving its objections, the proprietary knowledge referenced in the May 4, 2020 letter from Mark S. VanderBorek includes PowerPlan's unique software solutions, including its source code, system and database architecture, data

tables and their structure, database model and schema, algorithms, numerous unique and integrated features, functions, and components thereof, the methods and processes for carrying out those features and functions, the relationship of the various components to one another, and its manuals, user guides and software documentation. PowerPlan's investigation is continuing and it reserves the right to amend or supplement this response as Lucasys provides information relating to its activities. In addition, this response may be supplemented by expert testimony at the appropriate time in the case.

INTERROGATORY NO. 10:

Identify what steps PowerPlan takes to maintain the confidentiality of its trade secrets, confidential information, proprietary information, and protected information, and identify all persons associated with PowerPlan (including but not limited to officers and employees) who implement or oversee such steps.

RESPONSE TO INTERROGATORY NO. 10:

PowerPlan takes multiple steps to protect its trade secret, confidential, and protected information, including but not limited to, the following: PowerPlan requires employees to sign employment agreements prohibiting use or disclosure of PowerPlan's trade secret, confidential, and protected information outside of their employment with PowerPlan and which contain confidentiality obligations that

continue after the employee's employment with PowerPlan ends. PowerPlan has adopted employee handbooks with policies prohibiting employees from using or disclosing PowerPlan trade secret, confidential, and protected information outside of their employment with PowerPlan. PowerPlan also trains employees on protecting the confidential and proprietary nature of PowerPlan trade secret, confidential, and protected information. When employees leave employment with PowerPlan, departing employees are reminded of their ongoing obligations to protect PowerPlan trade secret, confidential, and protected information. These steps are primarily implemented by representatives of the Human Resources Department, which is currently led by Sarah Park, Vice President, Human Resources.

PowerPlan also licenses its software to customers pursuant to written license agreements in which the customer acknowledges PowerPlan's proprietary rights in and to the PowerPlan Software programs, manuals and supporting materials and requires the customer to protect the confidentiality of and not disclose PowerPlan's trade secret, confidential, and protected information without the consent of PowerPlan. These customer license agreements require the customer to maintain the confidentiality of the PowerPlan trade secret, confidential, and protected information using no less stringent procedures than the strictest procedures used to protect the customers' own confidential information. Licensing requirements, including the

requirement that confidentiality be maintained, are generally overseen by PowerPlan's legal team with oversight by the Chief Financial Officer, Joost Rutten.

PowerPlan also secures access to its software through various technical methods. The cloud-based version of PowerPlan's software operates in a secured information technology environment. Users are required to have appropriate security credentials and access is limited and subject to an acceptable use policy. Security of PowerPlan's cloud-based solution is overseen by Jennifer Butts, Director of Information Security and Compliance. For customers that deploy PowerPlan's software on their premises, software access is subject to the customer's internal security policies, subject always to the customer's obligation to protect the confidentiality of PowerPlan's confidential information.

PowerPlan also limits access to virtual and live PowerPlan user events in which confidential information may be discussed. Access to such events is generally limited only to employees of PowerPlan licensees, which have confidentiality obligations under the software license between PowerPlan and their employers. If an individual is permitted to attend such an event that is not an employee of a PowerPlan licensee, it is subject to a non-disclosure agreement. Oversight of these events are generally overseen by Drea Toretti, Vice President Marketing.

INTERROGATORY NO. 11:

Identify all trade secrets, confidential information, proprietary information, and protected information from interrogatory number 8 above that have been disclosed publicly or shared with any entity or person without a nondisclosure agreement or confidentiality agreement, and identify the date the trade secret was disclosed or shared, with whom it was shared, and the form in which it was disclosed (i.e., email, verbal communication, or some other form).

RESPONSE TO INTERROGATORY NO. 11:

PowerPlan objects to Interrogatory No. 11 as vague and indefinite in its use of the undefined terms “confidential information,” “proprietary information,” and “protected information.” Without waiving its objection and based upon its investigation to date, PowerPlan states that it is not aware of any of its trade secrets having been disclosed publicly or shared without a nondisclosure agreement or confidentiality agreement.

INTERROGATORY NO. 12:

Identify all non-employee agents of PowerPlan or its customers who have had access to PowerPlan’s software without a confidentiality agreement or similar agreement.

RESPONSE TO INTERROGATORY NO. 12:

PowerPlan objects to Interrogatory No. 12 as *(i)* vague in its use of the undefined terms “non-employee agents” and “access to PowerPlan’s software”; *(ii)* overbroad; and *(iii)* unlimited to any reasonable time period. Without waiving its objections and based upon its investigation to date, PowerPlan states that there have been no non-employee agents of PowerPlan that have been granted access to PowerPlan’s software without confidentiality or similar agreements. PowerPlan is aware that certain customers have retained firms to assist with certain consulting tasks related to the PowerPlan software. PowerPlan’s standard license terms require that PowerPlan’s licensees protect PowerPlan’s confidential information in a manner no less stringent than the strictest procedures used to protect the licensee’s confidential information. PowerPlan’s investigation is continuing and it reserves the right to amend or supplement this response.

INTERROGATORY NO. 13:

Identify each and every way in which PowerPlan claims that “Lucasys’ software inappropriately mimics and imitates PowerPlan’s proprietary software programs and solutions” and “competes with and mirrors the architecture, functions, and features of PowerPlan’s software solutions” as described in the 2019 Letter.

RESPONSE TO INTERROGATORY NO. 13:

PowerPlan objects to Interrogatory No. 13 to the extent it seeks information that is protected by the attorney work product doctrine and/or attorney-client privilege. Without waiving its objections or any claim of privilege or protection, PowerPlan states that as explained in the 2019 letter, Lucasys software had many of the same unique and proprietary features and functions of PowerPlan's software and was built using the similar software architecture and databases. The 2019 letter also explained that it appeared that Lucasys tax module reflected the certain key architectural components of the PowerTax solution including methods for tracking book-tax differences, cases structure, allocation of book depreciation and tracking deferred taxes by book to tax differences. PowerPlan's investigation is continuing and it reserves the right to amend or supplement this response as Lucasys responds to PowerPlan's discovery and expert analysis is undertaken.

INTERROGATORY NO. 14:

Identify all reasons for PowerPlan's assertion that Lucasys, Lantukh, Strang, or Chang "undoubtedly [are] using . . . PowerPlan Protected Information in connection with marketing and seeking to sell its competing software to" PowerPlan's customers as described in the 2019 Letter.

RESPONSE TO INTERROGATORY NO. 14:

PowerPlan objects to Interrogatory No. 14 to the extent it seeks information that is protected by the attorney work product doctrine and/or attorney client privilege. Without waiving its objection or any claim of privilege or protection, PowerPlan states that as explained in the 2019 letter, Messrs. Lantukh, Strang, and Chang were all former PowerPlan employees who had exposure to PowerPlan's protected confidential and trade secret information while employees subject to confidentiality obligations. In subsequent professional positions, Lucasys' principals also had access to PowerPlan protected information under confidentiality obligations in serving certain PowerPlan customers. Also, as explained in the 2019 letter, Lucasys was providing services to Florida Power & Light in their implementation of PowerPlan's software. In that capacity, Lucasys would have direct access to PowerPlan's confidential and proprietary systems under confidentiality obligations. In addition, Lucasys claimed it had developed its software solutions within just a year of being formed, an unusually short period of time to develop software of the level of sophistication and complexity that Lucasys was claiming. PowerPlan's investigation is continuing and it reserves the right to amend or supplement this response as Lucasys responds to PowerPlan's discovery and expert analysis is undertaken.

INTERROGATORY NO. 15:

Identify all bases for PowerPlan's assertion that Lucasys, Lantukh, Chang, and Strang are "improperly, unlawfully, and unfairly using PowerPlan's Protected Information—including but not limited to information embodied in PowerPlan's proprietary architecture, software, data bases and unique functions and features" as described in the 2019 Letter.

RESPONSE TO INTERROGATORY NO. 15:

See Response to Interrogatory No. 14.

INTERROGATORY NO. 16:

Identify all material facts relating to your development and deployment of your Workflow Process Automation product from conception to the present including a complete chronological history of material dates, all personnel involved, and resources used.

RESPONSE TO INTERROGATORY NO. 16:

PowerPlan objects to the Interrogatory No. 16 as (i) irrelevant to the parties' dispute and (ii) unduly burdensome and not proportional to the needs of the case insofar as it demands a "complete chronological history of material dates, all personnel involved, and resources used."

Without waiving these objections, PowerPlan states that it conceived of the Workflow Process Automation (“WPA”) product in approximately late 2017 as a replacement for PowerPlan’s already-existing Month End Automation product. Pre-development activity occurred throughout 2018. PowerPlan began development of WPA in or around December 2018 with contractors located in the Republic of Colombia. In or around March 2020, PowerPlan transitioned development of WPA to its contractors located in the Dominican Republic. PowerPlan began user testing in or around May 2020, recruitment for beta testing in or around June 2020, and beta testing in or around November 2020. PowerPlan concluded beta testing of WPA in or around February 2021 and released WPA to the public in or around March 2021. The following current and former PowerPlan employees were involved, to varying extents, in the design, development, and or marketing of WPA: (1) Aaron Smith, Principal Technology Product Manager, (2) Tiffany Smith, Senior Manager Marketing Communications, (3) Chris Schoon, Director of Architecture, and (4) Suzanne Ward, Senior Vice President, Product Management.

Dated: November 15, 2021

As to Objections:

s. Damond R. Mace _____

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing by email to counsel of record as follows:

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/s/ Damond R. Mace
Damond R. Mace
Attorney for PowerPlan, Inc.

VERIFICATION

I have read the foregoing **POWERPLAN, INC.'S RESPONSES TO LUCASYS INC.'S FIRST SET OF INTERROGATORIES** and am familiar with and know its contents. I am the Vice President of Growth Strategy at PowerPlan, Inc., a defendant and counterclaim plaintiff in this action, and I make this verification in that capacity and for that reason. Not all of the responses are within my personal knowledge because no single PowerPlan agent or employee has knowledge of all these matters. Rather, the responses are based on information assembled by PowerPlan through its employees, and its attorneys, and I am informed and believe, and therefore declare, that responses based on such information are true and correct. As for matters that are within my own personal knowledge, the responses are true and correct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 15, 2021.


Jim Dahlby



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LUCASYS INC.,

*Plaintiff and
Counterclaim Defendant,*

v.

POWERPLAN, INC.,

*Defendant and
Counterclaim Plaintiff.*

Civil Action No. 1:20-cv-2987-AT

Judge Amy Totenberg

**POWERPLAN, INC.'S ANSWERS AND OBJECTIONS TO
LUCASYS INC.'S SECOND CONTINUING INTERROGATORIES**

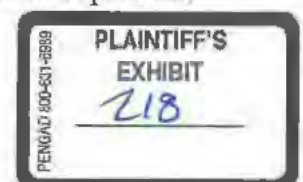
Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, PowerPlan, Inc. ("PowerPlan") hereby answers and objects to Lucasys Inc.'s ("Lucasys") Second Continuing Interrogatories to PowerPlan as follows:

INTERROGATORY NO. 17:

Identify documents produced by PowerPlan sufficient to show each trade secret that PowerPlan listed in the trade secrets identified by PowerPlan on April 29, 2022 and for each document identified, list the corresponding bates label.

ANSWER TO INTERROGATORY NO. 17:

PowerPlan objects to Interrogatory No. 17 as it is unduly burdensome and not proportional to the needs of the case insofar as it demands that PowerPlan identify documents sufficient to show each trade secret that PowerPlan listed in its April 29,



2022 disclosure, even though the burden of determining the answer to Interrogatory No. 17 is substantially the same for either party. Without waiving its objection, PowerPlan states that the answer to Interrogatory No. 17 can be substantially determined by (i) examination of PowerPlan's PowerTax module which will be made available for inspection by Lucasys' experts upon entry of an appropriate protective order, and (ii) examination of business records produced by PowerPlan in response to Lucasys' Requests for Production, including but not limited to POWERPLAN01289004. PowerPlan's investigation is continuing and it reserves the right to amend or supplement this response. In addition, this response may be supplemented by expert testimony at the appropriate time in the case.

INTERROGATORY NO. 18:

Identify all trade secrets from the list of trade secrets provided by PowerPlan on April 29, 2022 that PowerPlan contends that Lucasys misappropriated, and for each of those trade secrets, identify all bases for PowerPlan's contending that Lucasys misappropriated the trade secret.

ANSWER TO INTERROGATORY NO. 18:

PowerPlan objects to Interrogatory No. 18 as it (i) is premature as discovery in the case is ongoing, and Lucasys only recently produced technical information needed to fully assess the scope of its misappropriation; (ii) is vague and indefinite in its use of the phrase "bases for PowerPlan's contending that Lucasys

misappropriated the trade secret”, (iii) is unduly burdensome and not proportional to the needs of the case, and (iv) seeks information that is protected by the attorney work product doctrine and/or attorney client privilege. Without waiving its objections, PowerPlan states that its investigation as to the trade secrets Lucasys misappropriated is ongoing and reserves the right to amend or supplement this response as Lucasys provides information relating to its activities. In addition, this response may be supplemented by expert testimony at the appropriate time in the case.

INTERROGATORY NO. 19:

Identify the person(s) who posted, uploaded, and/or made available the information identified in Persinger-Website000001 – Persinger-Website002891 on PowerPlan’s website, Persinger-App002892 – Persinger-App008871 on PowerPlan’s smartphone application, and Persinger-Github009088 Persinger-Github011001 on Github’s platform. For each person identified, further identify:

- a. When the person posted the information;
- b. Who, if anyone, instructed and/or directed the person to post the information;
- c. Who, if anyone, approved the posting and/or uploading of the information; and

d. What, if any, training the person who posted the information received relating to whether the posted information is confidential information and/or a trade secret.

ANSWER TO INTERROGATORY NO. 19:

PowerPlan objects to Interrogatory No. 19 as it is (i) unduly burdensome and not proportional to the needs of the case insofar as it demands that PowerPlan summarize actions taken over an indefinite period, and (ii) improperly compound and containing multiple subparts. Without waiving its objections, PowerPlan states that the answer to Interrogatory No. 19 is the following:

With respect to Persinger-Website000001-002891 and Persinger-App002892-00871, the materials were uploaded to the PowerPlan website and/or Cvent phone application by PowerPlan's marketing department following approval by the respective content owner. The earliest possible dates on which PowerPlan's marketing department could have uploaded the materials to the PowerPlan website and/or Cvent phone application are included in the chart attached as Exhibit A. PowerPlan does not have any formal policies or training specifically related to the upload of materials to the PowerPlan website and/or Cvent phone application. PowerPlan, however, provides all employees with annual security awareness training to provide information on how to protect data and understand information classification levels. PowerPlan also has an Information Security policy that all

PowerPlan employees are made aware of through the PowerPlan Employee Handbook.

PowerPlan did not upload the information found in Persinger-Github009089-009423 and Persinger-Github009528-10982 and therefore cannot respond to Interrogatory No. 19 with respect to these materials. With respect to Persinger-Github009088, Persinger-Github009424-9527, and Persinger-Github010983-011001, any information derived from a PowerPlan-owned Github account was uploaded by Fernando Somoza and/or Willis Diebel. All folders within a PowerPlan-owned Github account are private, however, there was a brief period where one or more folders in its Github account were made accessible to the public. Chris Schoon, Daniel Motter, and/or other individuals may have edited, relocated, and/or duplicated information from a temporarily public folder on a PowerPlan-owned Github account to personally-owned Github accounts in approximately 2020, as reflected in Persinger-Github009088. PowerPlan does not have any formal policies or training related to use of the PowerPlan-owned Github account. PowerPlan, however, provides all employees with annual security awareness training to provide information on how to protect data and understand information classification levels. PowerPlan also has an Information Security policy that all PowerPlan employees are made aware of through the PowerPlan Employee Handbook.

Dated: June 13, 2022

As to Objections:

/s/ Damond R. Mace _____

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I hereby certify that I have this day served the foregoing by email to counsel of record as follows:

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/s/ Damond R. Mace
Damond R. Mace

Attorney for PowerPlan, Inc.

EXHIBIT A

Begin Date	File Name	Earliest Possible Date Available on Website or Phone Application
Persinger-Website000001	Exhibit B.png	Unknown
Persinger-Website000002	PowerPlan_Article_Strategy_2018.pdf	7/11/2018
Persinger-Website000004	PowerPlan_Managed_Services_REV190501AP_2019.pdf	9/14/2017
Persinger-Website000012	PowerPlan_WP_Security_Reliability_REV21_04A.pdf	2/10/2017
Persinger-Website000019	PowerPlan_WP_Unleash_Hidden_Value_REV180815AD.pdf	10/2/2018
Persinger-Website000025	PowerPlan_3_Mistakes_Avoid_Lease_Compliance_REV191028A.pdf	2/20/2017
Persinger-Website000027	PowerPlan_8_Lease_Standard_Changes_REV191028A.pdf	2/10/2017
Persinger-Website000029	PowerPlan_AIO_2019Utilities_Brochure_REV190724AD_5_.pdf	8/19/2019
Persinger-Website000035	PowerPlan_AIP_A_Better_Approach_Multi_Year_Capital_Allocation_REV190724AD.pdf	8/7/2019
Persinger-Website000040	PowerPlan_Article_Lease_Services_REV191028A.pdf	6/22/2018
Persinger-Website000042	PowerPlan_Article_Reform_Isn't_Over.pdf	10/19/2018
Persinger-Website000044	PowerPlan_Lease_Accounting_ASC_IFRS_REV190530A__1_.pdf	Unknown
Persinger-Website000046	PowerPlan_Readiness_Checklist_REV191028AD.pdf	3/16/2018
Persinger-Website000049	FA1_01_CR_Querying_Reporting_Validations_FINAL.pdf	5/15/2019
Persinger-App003565	FA1-01_CR-Querying_Reporting_Validations_-_FINAL.original.1557261319.pdf	5/15/2019
Persinger-Website000086	FA1_02_Project_Management_Overall_Project_Flow_FINAL.pdf	5/15/2019
Persinger-App003596	FA1-02_Project_Management_-_Overall_Project_Flow_-_FINAL.original.1557437845.pdf	5/15/2019
Persinger-Website000117	FA1_03_Managing_CWIP_RWIP_FINAL.pdf	5/15/2019
Persinger-App003638	FA1-03_Managing_CWIP_RWIP_-_FINAL.original.1557437720.pdf	5/15/2019
Persinger-Website000159	FA1_04_Month_End_Close_FINAL.pdf	5/15/2019
Persinger-App003703	FA1-04_Month_End_Close_-_FINAL.original.1557261393.pdf	5/15/2019
Persinger-Website000224	FA1_05_Unitization_Best_Practices_FINAL.pdf	5/15/2019
Persinger-App003751	FA1-05_Unitization_Best_Practices_-_FINAL.original.1557437642.pdf	5/15/2019
Persinger-Website000272	FA1_06_Manage_Assets_FINAL.pdf	5/15/2019
Persinger-App003798	FA1-06_Manage_Assets_-_FINAL.original.1557437578.pdf	5/15/2019
Persinger-Website000319	FA1_08_Retirement_Best_Practices_FINAL.pdf	5/15/2019
Persinger-Website000354	FA1_09_Depreciation_Concepts_FINAL.pdf	5/15/2019
Persinger-Website000398	FA1_10_Depreciation_Forecasting_FINAL.pdf	5/15/2019
Persinger-Website000460	FA1_11_CR_Allocations_Deep_Dive_FINAL.pdf	5/15/2019
Persinger-Website000485	FA1_12_User_Reports_and_Queries_FINAL.pdf	5/15/2019
Persinger-App003876	FA1-12_User_Reports_and_Queries_-_FINAL.original.1557437386(1).pdf	5/15/2019
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Persinger-Website000549	FA2_02_AES_Journey_to_Cloud_FINAL.pdf	5/15/2019
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Persinger-App004005	FA2-04_Technology_Transformation_in_PSE_Finance_Dept_-_FINAL.original.1557263185(1).pdf	5/15/2019

Persinger-App004024	FA2-04_Technology_Transformation_In_PSE_Finance_Dept_-_FINAL.original.1557263185.pdf	5/15/2019
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Persinger-Website000637	FA2_06_Allocations_and_Concurrent_Processing___An_Eversource_Case_Study___FINAL.pdf	5/15/2019
Persinger-App004054	FA2-06_Allocations_and_Concurrent_Processing_-_An_Eversource_Case_Study_-_FINAL.original.1557250017.pdf	5/15/2019
Persinger-Website000667	FA2_07_Managing_assets_in_a_digital_world___FINAL.pdf	5/15/2019
Persinger-App004072	FA2-07_Managing_assets_in_a_digital_world_-_FINAL.original.1557431501.pdf	5/15/2019
Persinger-Website000685	FA2_08_Automating_Accounting_in_a_Digital_World___FINAL.pdf	5/15/2019
Persinger-App004095	FA2-08_Automating_Accounting_in_a_Digital_World_-_FINAL.original.1557431914.pdf	5/15/2019
Persinger-Website000708	FA2_10_Fixed_Assets_Analytics___A_Consolidated_Edison_o_NY_Case_Study___FINAL.pdf	5/15/2019
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Persinger-App004284	LEASE-05_Lease_Admin_and_MeC_Best_Practices_-_FINAL.original.1557430740.pdf	5/15/2019
Persinger-Website000893	LEASE_06_AP_and_Payment_Invoice_Reconciliation___FINAL.pdf	5/15/2019
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Persinger-Website000934	LEASE_07_New_Leasing_Company_and_JE_Maint_for_local_Sets_of_Books___FINAL.pdf	5/15/2019
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Persinger-Website001017	LEASE_11_Month_End_Close___NP___FINAL.pdf	5/15/2019
Persinger-Website001052	LEASE_12_Reporting_and_Insights___FINAL.pdf	5/15/2019
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Persinger-Website001076	Portfolio_Roadmap_Income_Tax.pdf	5/15/2019
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Persinger-App005212	TAX1-01_Processing_in_PowerTax_-_FINAL.original.1557256175.pdf	5/15/2019
Persinger-Website001175	TAX1_02_Bonus_Depreciation_Is_Gone___Now_What___FINAL.pdf	5/15/2019
Persinger-App005212	TAX1-02_Bonus_Depreciation_Is_Gone___Now_What_-_FINAL.original.1557257699.pdf	5/15/2019
Persinger-Website001233	TAX1_03_Provision_and_Tax_Reform_2.0_Understanding_the_Impacts_of_Tax_Reform_FINAL.pdf	5/15/2019
Persinger-Website001286	TAX1_04_Plant_Impacts_on_PowerTax_Depreciation_and_Deferred_Tax___FINAL.pdf	5/15/2019
Persinger-App005319	TAX1-04_Plant_Impacts_on_PowerTax_Depreciation_and_Deferred_Tax_-_FINAL.original.1557257796.pdf	5/15/2019
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Persinger-Website001776	TAX2_06_Validating_ARAM_Post_TJCA_and_SQL_for_Prescribed_Reversals___FINAL.pdf	5/15/2019
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Persinger Website001813	TAX2_10_Advanced_Configuration_in_Provision___FINAL.pdf	5/15/2019
Persinger-Website001852	TAX2_11_Advanced_Provision_Reporting___FINAL.pdf	5/15/2019
Persinger Website001926	TAX2_12_Operate_the_migration_of_tax_department_operating_models___FINAL.pdf	5/15/2019
Persinger-App005664	TAX2-12_Operate_the_migration_of_tax_department_operating_models_-_FINAL.original.1557260040.pdf	5/15/2019
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Persinger-Website002018	LEASE_03_Lessor_Accounting___FINAL.pdf	5/15/2019
Persinger Website002054	LEASE_05_Lease_Admin_and_MEC_Best_Practices___FINAL.pdf	5/15/2019
Persinger-Website002102	LEASE_07_New_Leasing_Company_and_JE_Maint_for_local_Sets_of_Books___FINAL.pdf	5/15/2019
Persinger Website002148	LEASE_10_Lease_Creating_a_Contract___FINAL.pdf	5/15/2019
Persinger-Website002185	LEASE_11_Month_End_Close___NP___FINAL.pdf	5/15/2019
Persinger-Website002220	LEASE_12_Reporting_and_Insights___FINAL.pdf	5/15/2019
Persinger Website002244	AIO_01_Future_Proofing_Your_Asset_Management_Program___FINAL.pdf	5/15/2019
Persinger-App003035	AIO-01_Future_Proofing_Your_Asset_Management_Program_-_FINAL.original.1557252574.pdf	5/15/2019
Persinger-Website002277	AIO_02_AIO_Overview_Concepts___FINAL.pdf	5/15/2019
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Persinger-Website002307	AIO_03_AIO_Assets_and_Events___FINAL.pdf	5/15/2019
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VERIFICATION

I have read the foregoing **POWERPLAN, INC.'S ANSWERS AND OBJECTIONS TO LUCASYS INC.'S SECOND CONTINUING INTERROGATORIES** and am familiar with and know its contents. Not all of the responses are within my personal knowledge because no single PowerPlan agent or employee has knowledge of all these matters. Rather, the responses are based on information assembled by PowerPlan through its employees, and its attorneys, and I am informed and believe, and therefore declare, that responses based on such information are true and correct. As for matters that are within my own personal knowledge, the responses are true and correct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 12, 2022.


/s/ 

VERIFICATION

I have read the foregoing **POWERPLAN, INC.'S ANSWERS AND OBJECTIONS TO LUCASYS INC.'S SECOND CONTINUING INTERROGATORIES** and am familiar with and know its contents. Not all of the responses are within my personal knowledge because no single PowerPlan agent or employee has knowledge of all these matters. Rather, the responses are based on information assembled by PowerPlan through its employees, and its attorneys, and I am informed and believe, and therefore declare, that responses based on such information are true and correct. As for matters that are within my own personal knowledge, the responses are true and correct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 12, 2022.

/s/ 



**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

LUCASYS INC.,

Plaintiff and Counterclaim Defendant,

v.

POWERPLAN, INC.,

Defendant and Counterclaim Plaintiff.

Civil Action No.: 1:20-CV-02987-AT

Judge Amy Totenberg

POWERPLAN, INC.'S IDENTIFICATION OF TRADE SECRETS

OUTSIDE COUNSEL'S EYES ONLY

[Pursuant to Stipulated Protective Order (Doc. 44)]



information potentially at issue in this dispute. PowerPlan reserves all of its rights to supplement and amend this listing as a result of additional information resulting from discovery.

Dated: April 29, 2022

s/ Damond R. Mace _____

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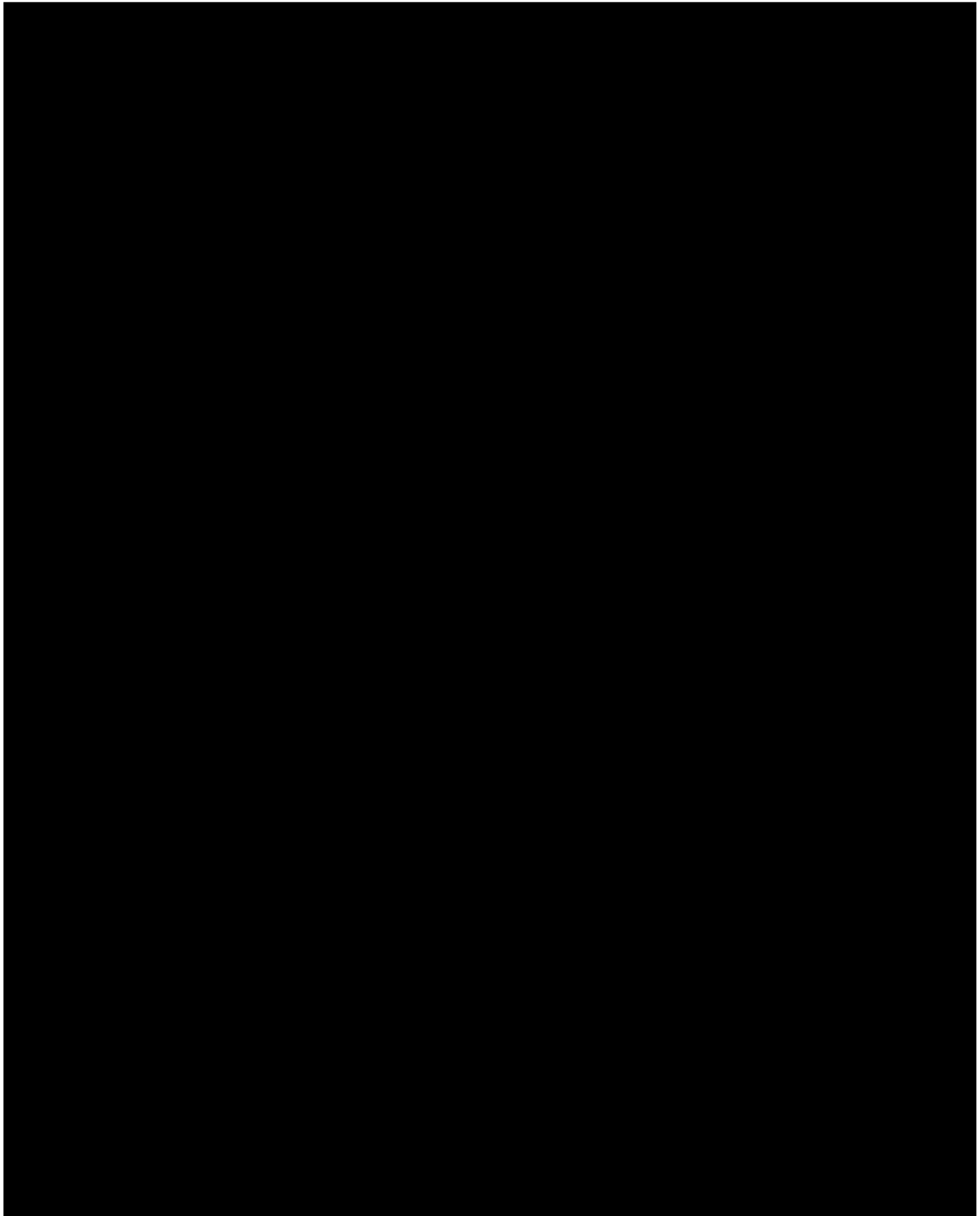
Facsimile: +1.216.479.8780

Attorneys for Defendant

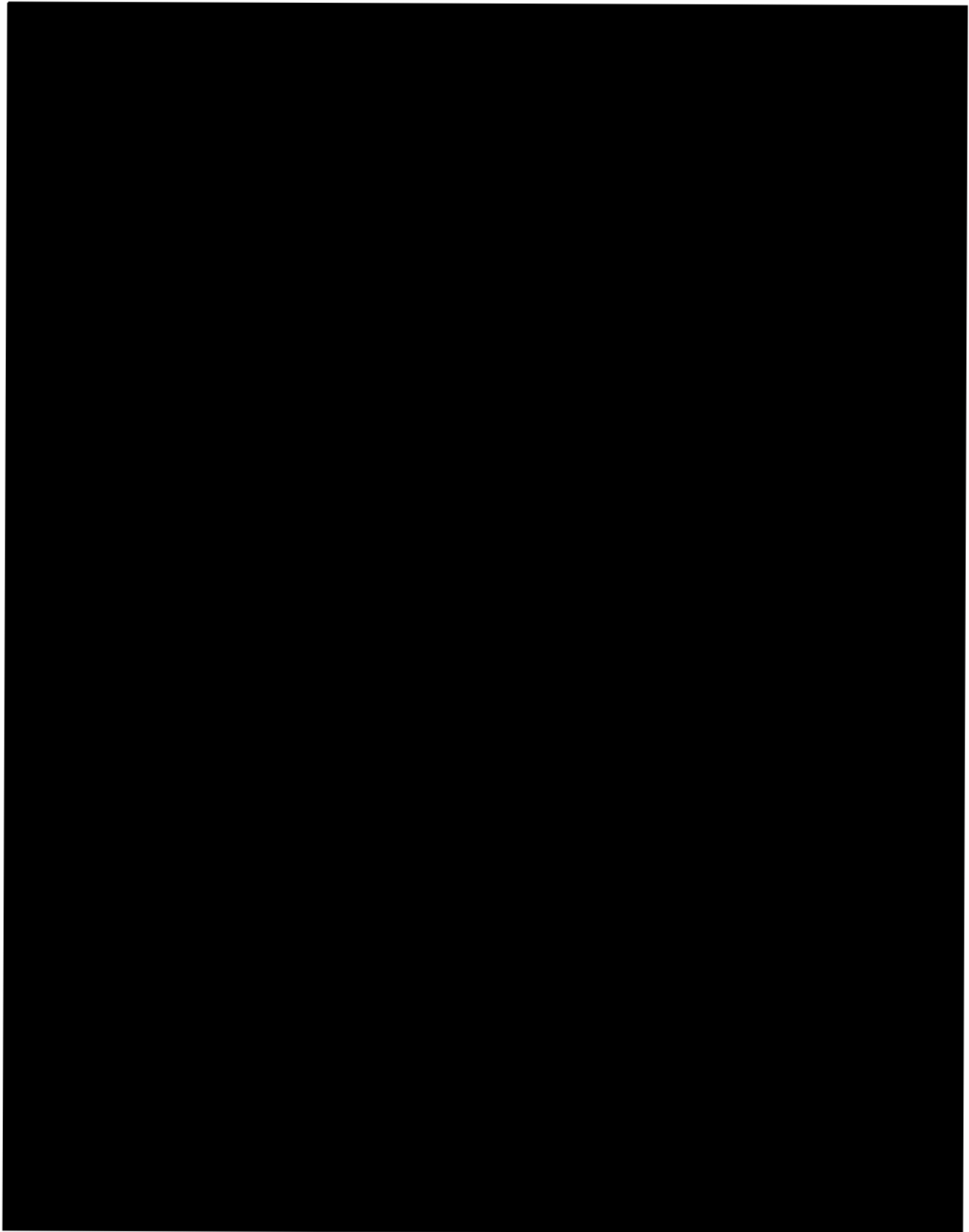
and Counterclaim Plaintiff

PowerPlan, Inc.

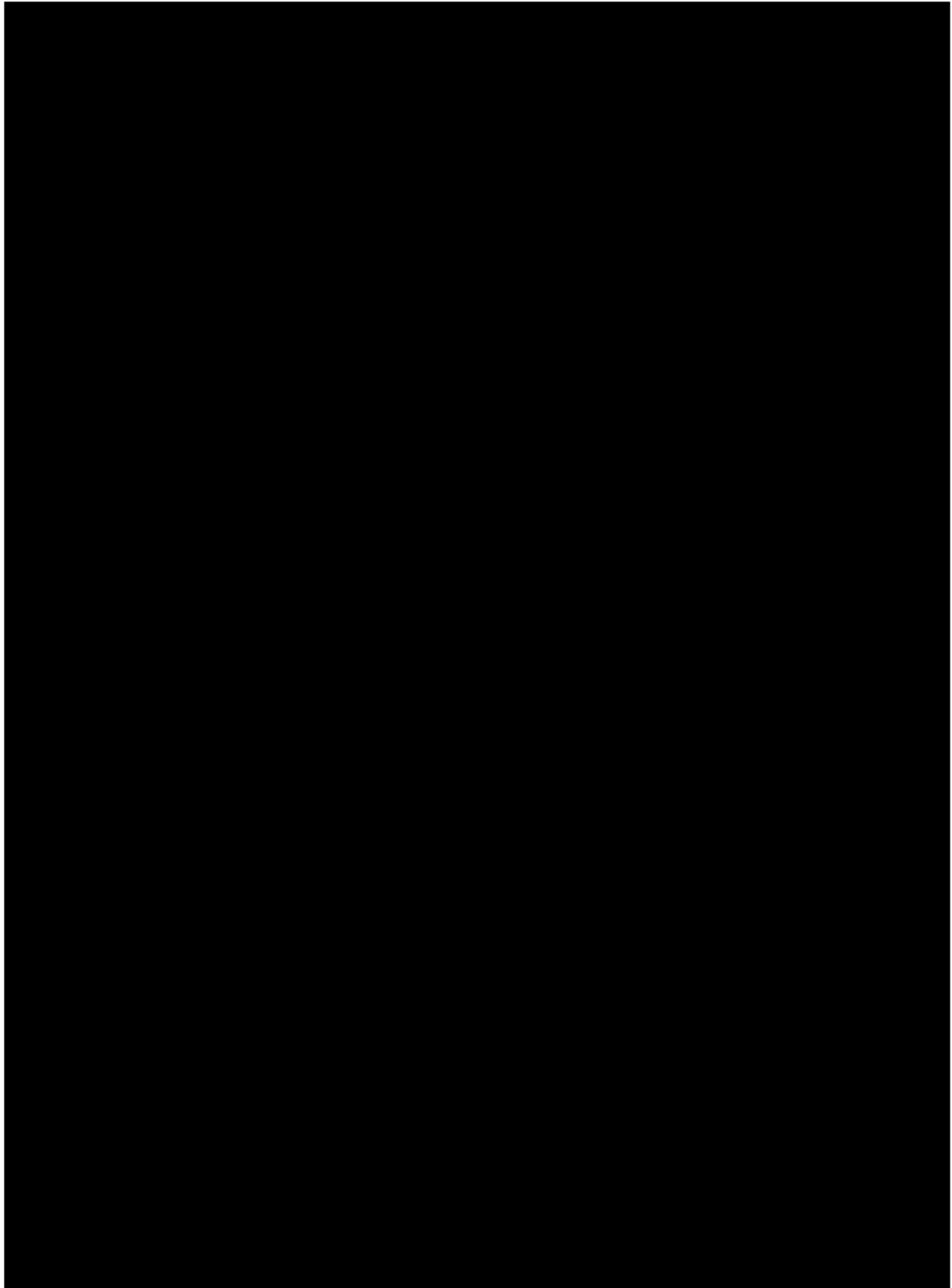
PowerPlan, Inc.'s Identification of Trade Secrets – PowerTax



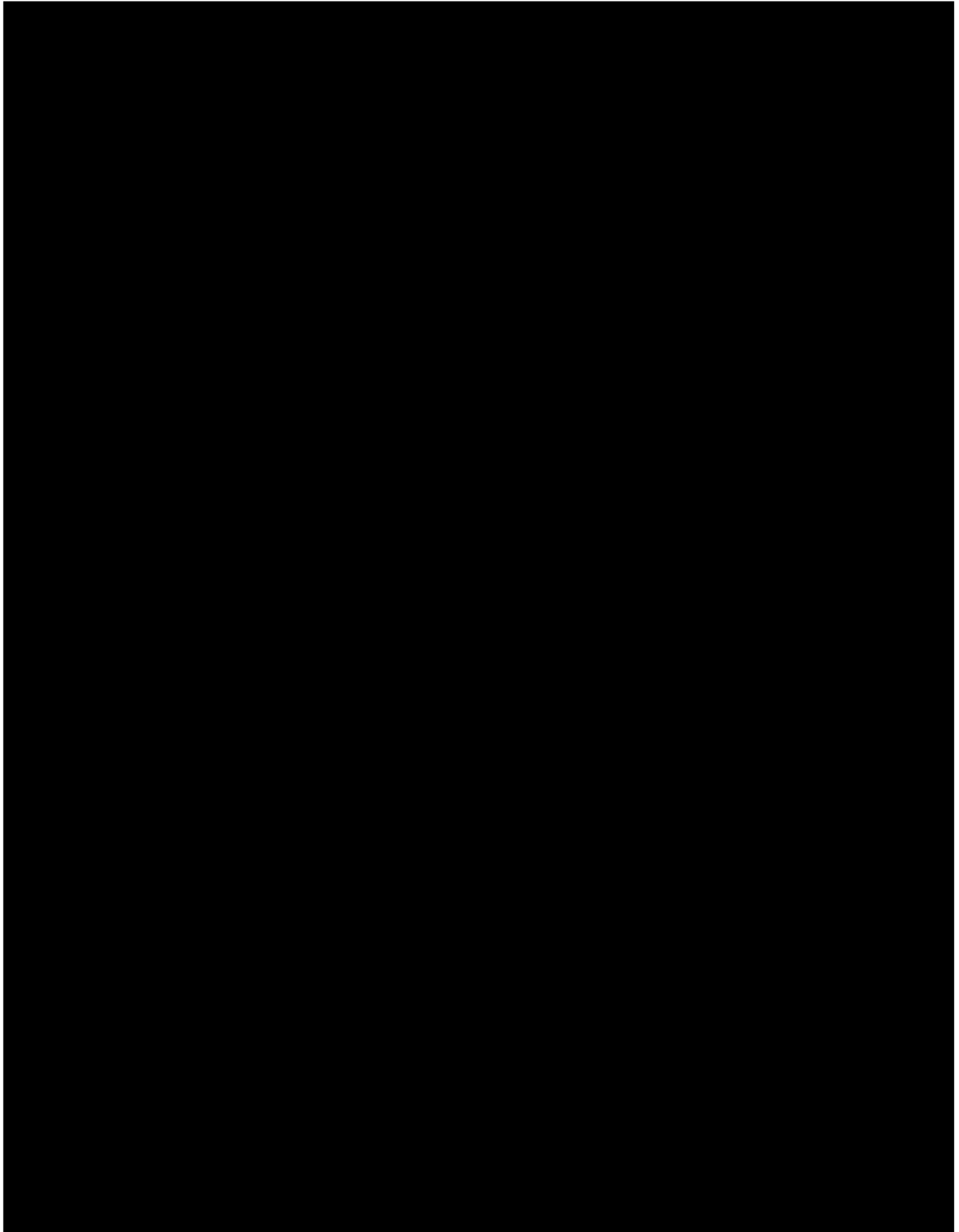
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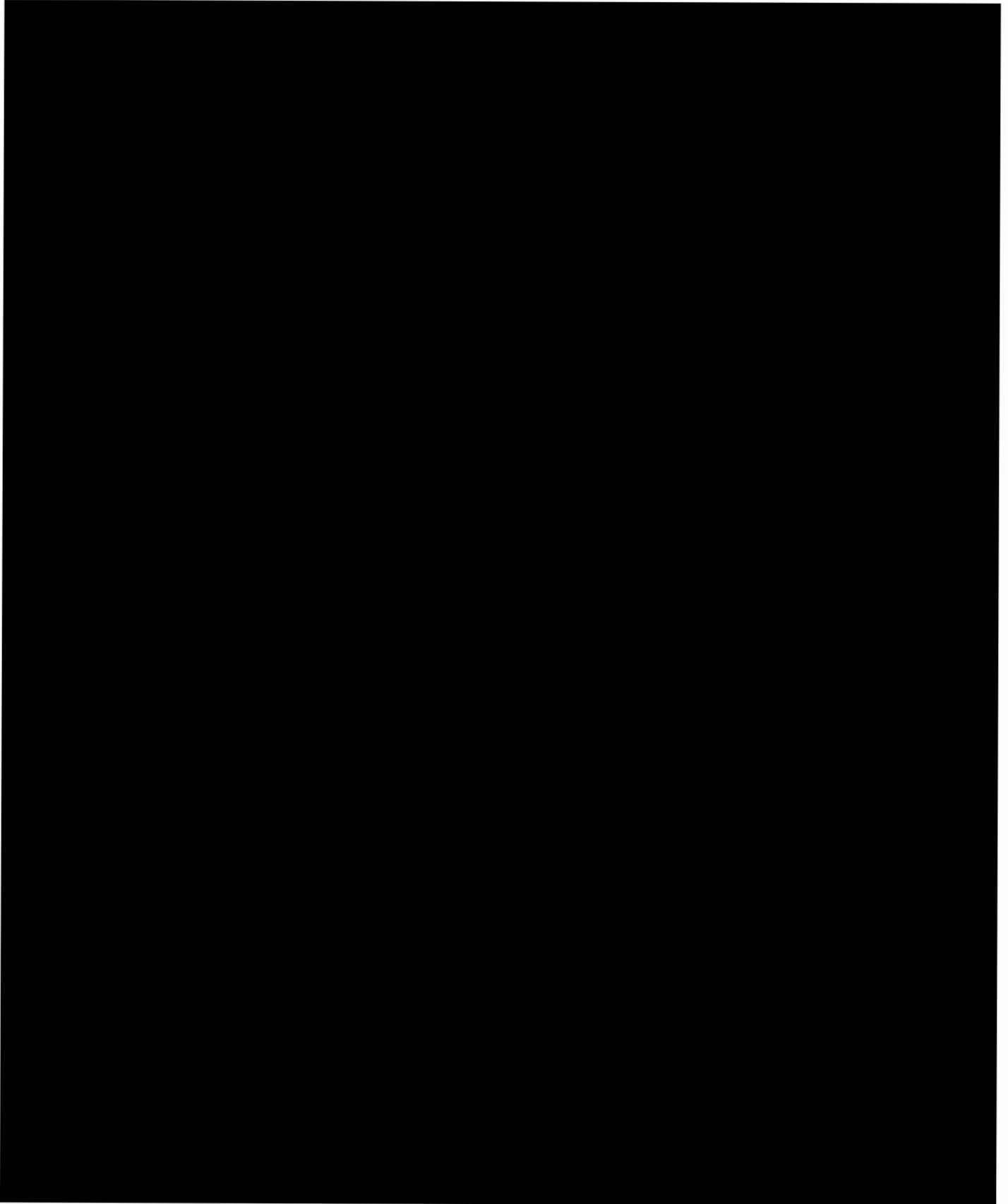
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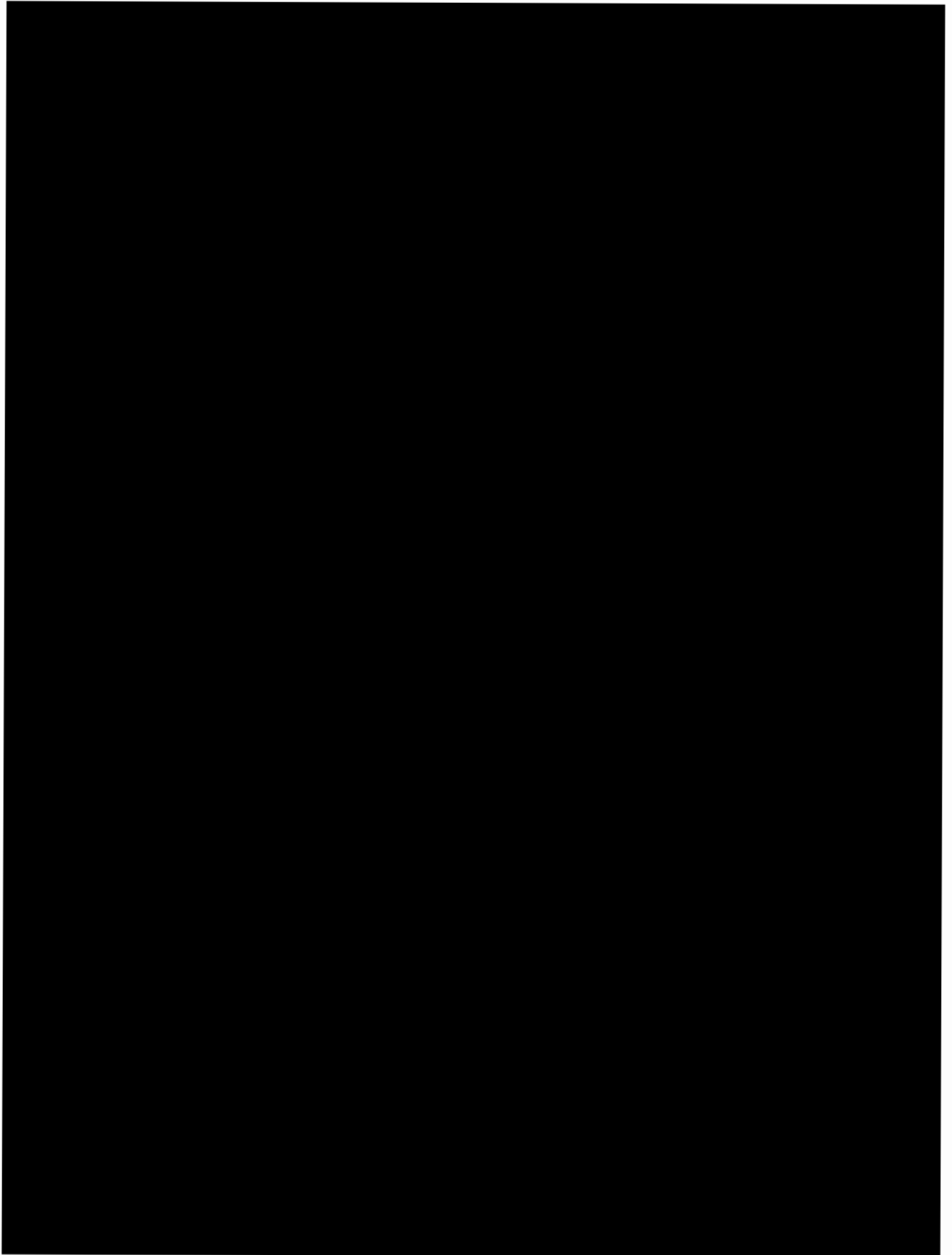
PowerPlan, Inc.'s Identification of Trade Secrets PowerTax



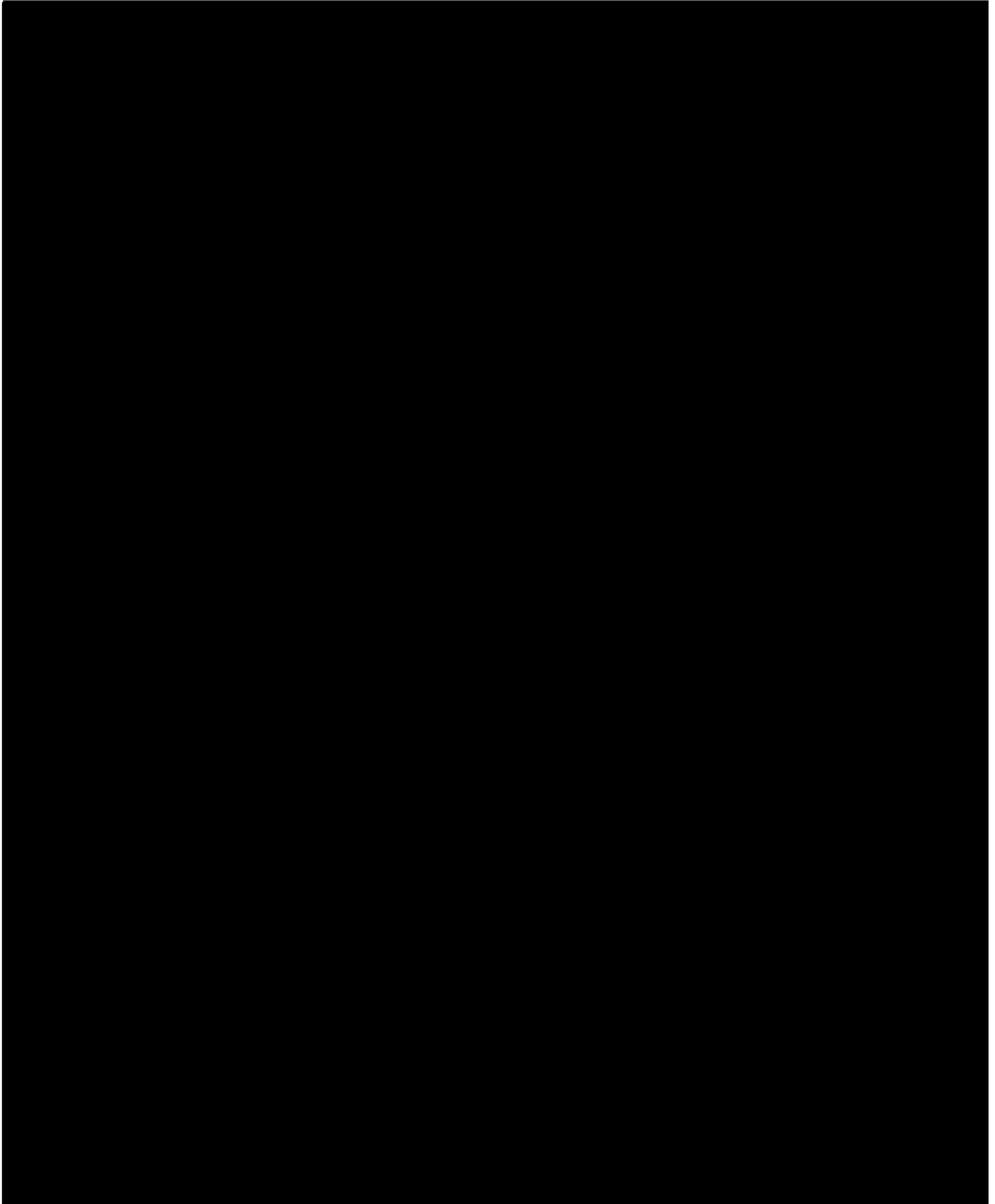
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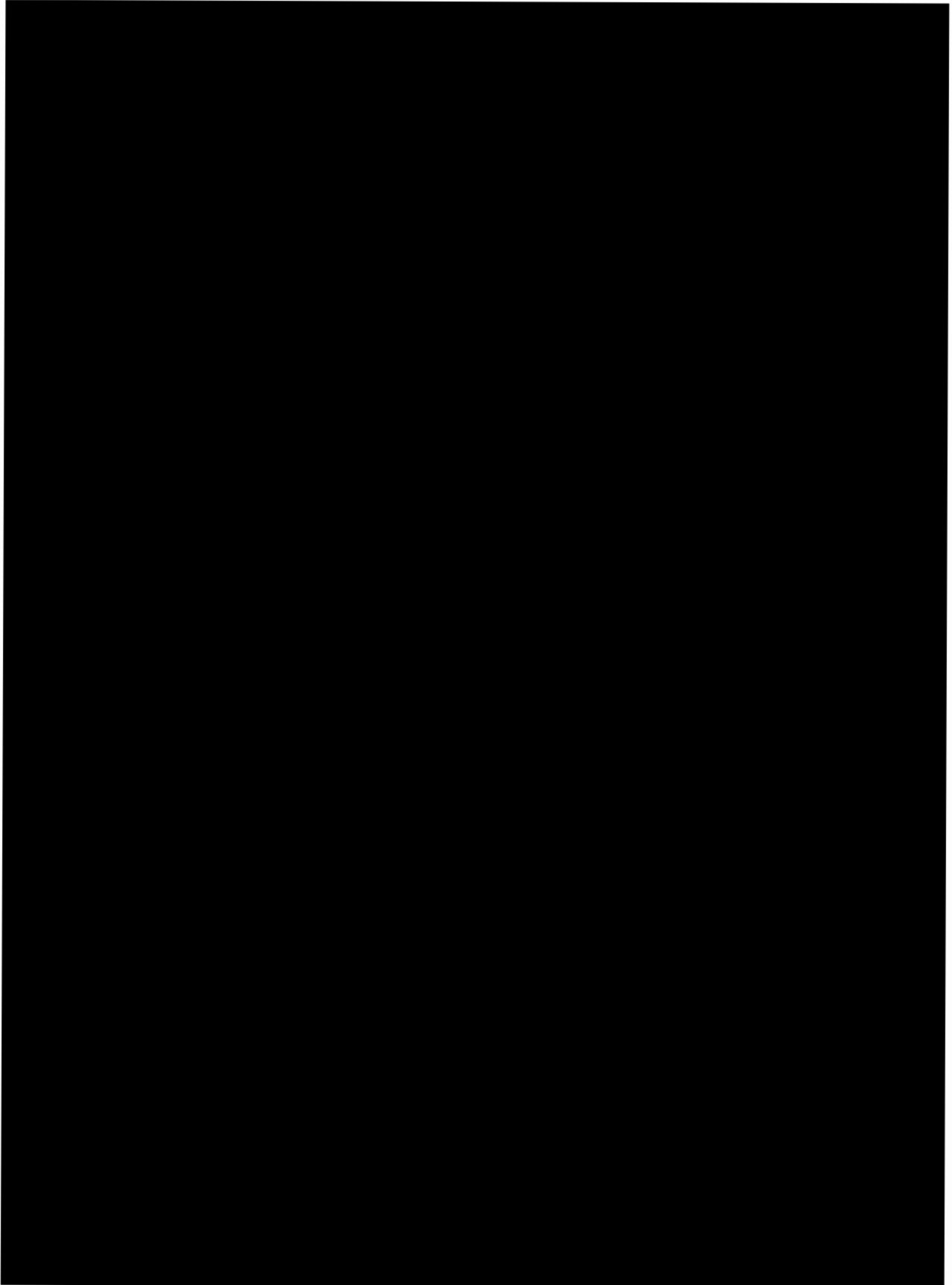
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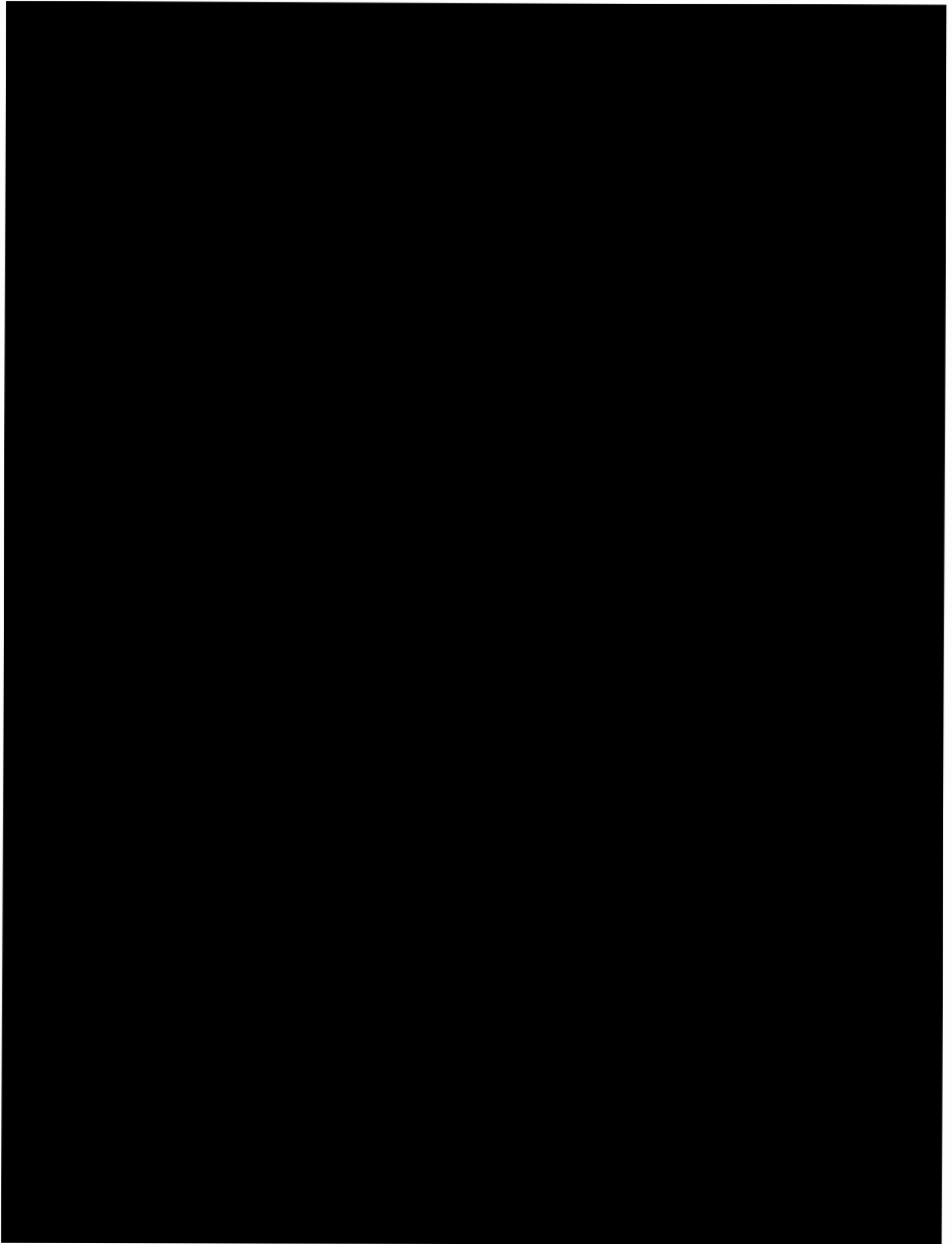
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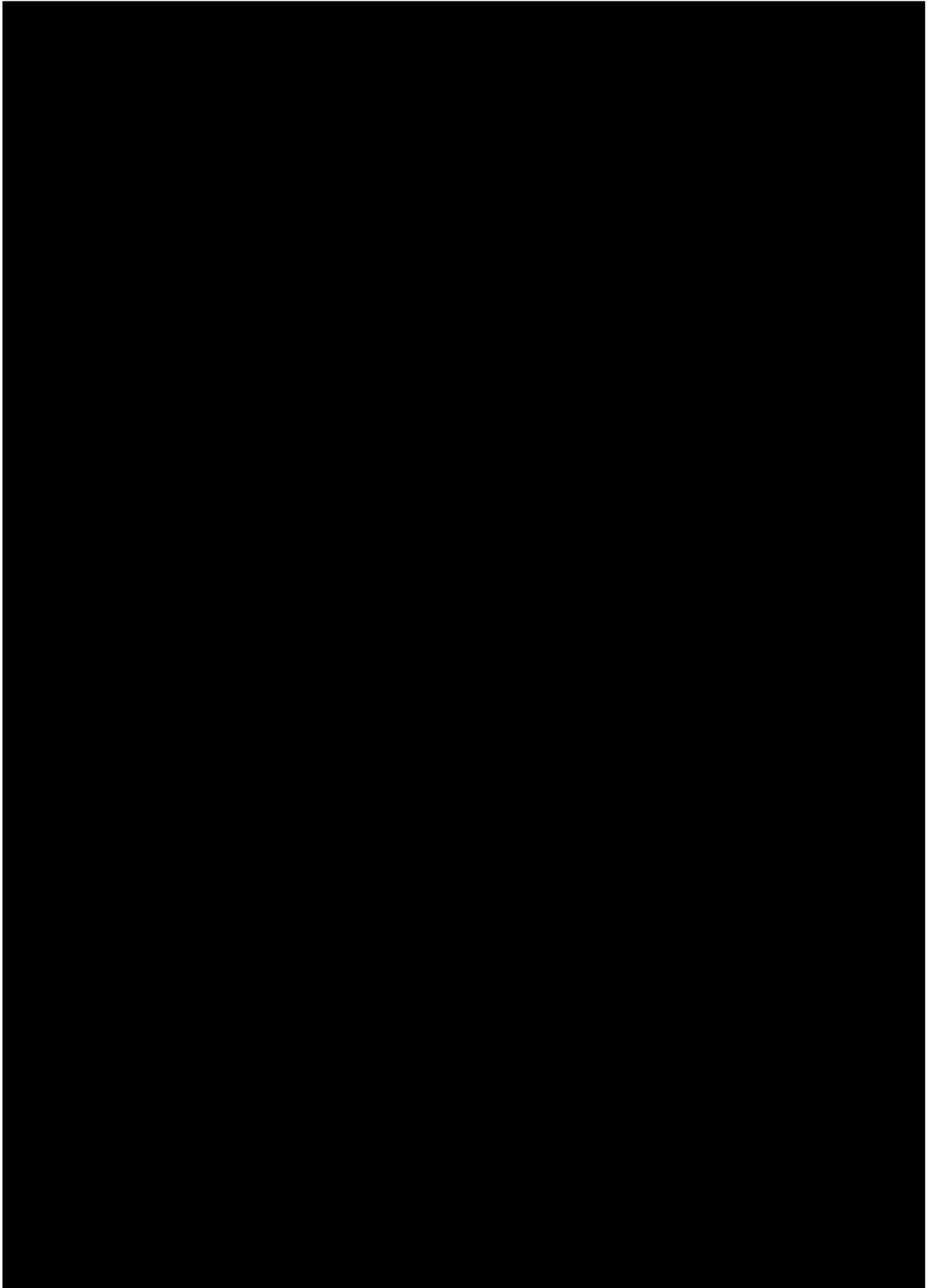
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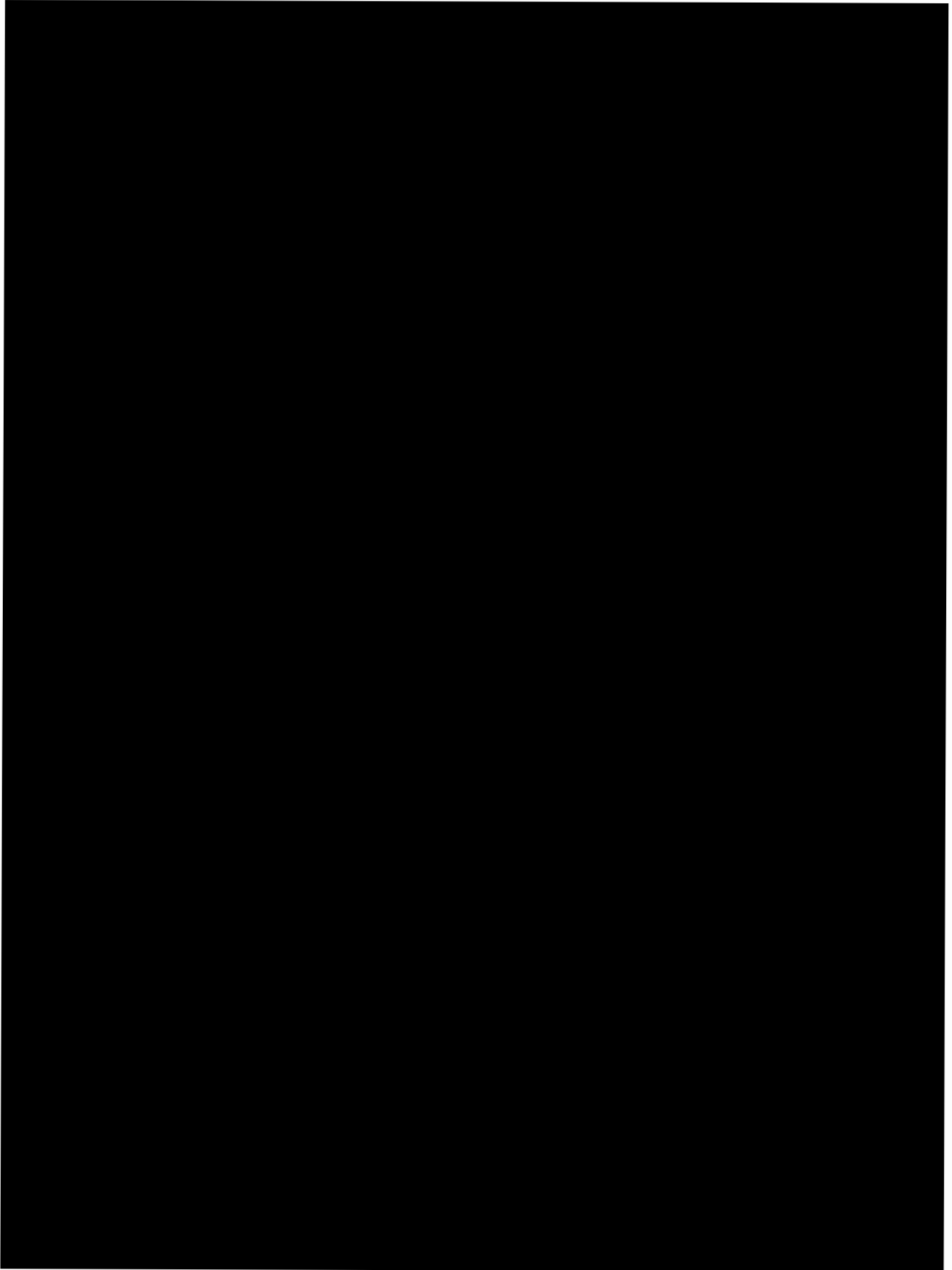
PowerPlan, Inc.'s Identification of Trade Secrets PowerTax



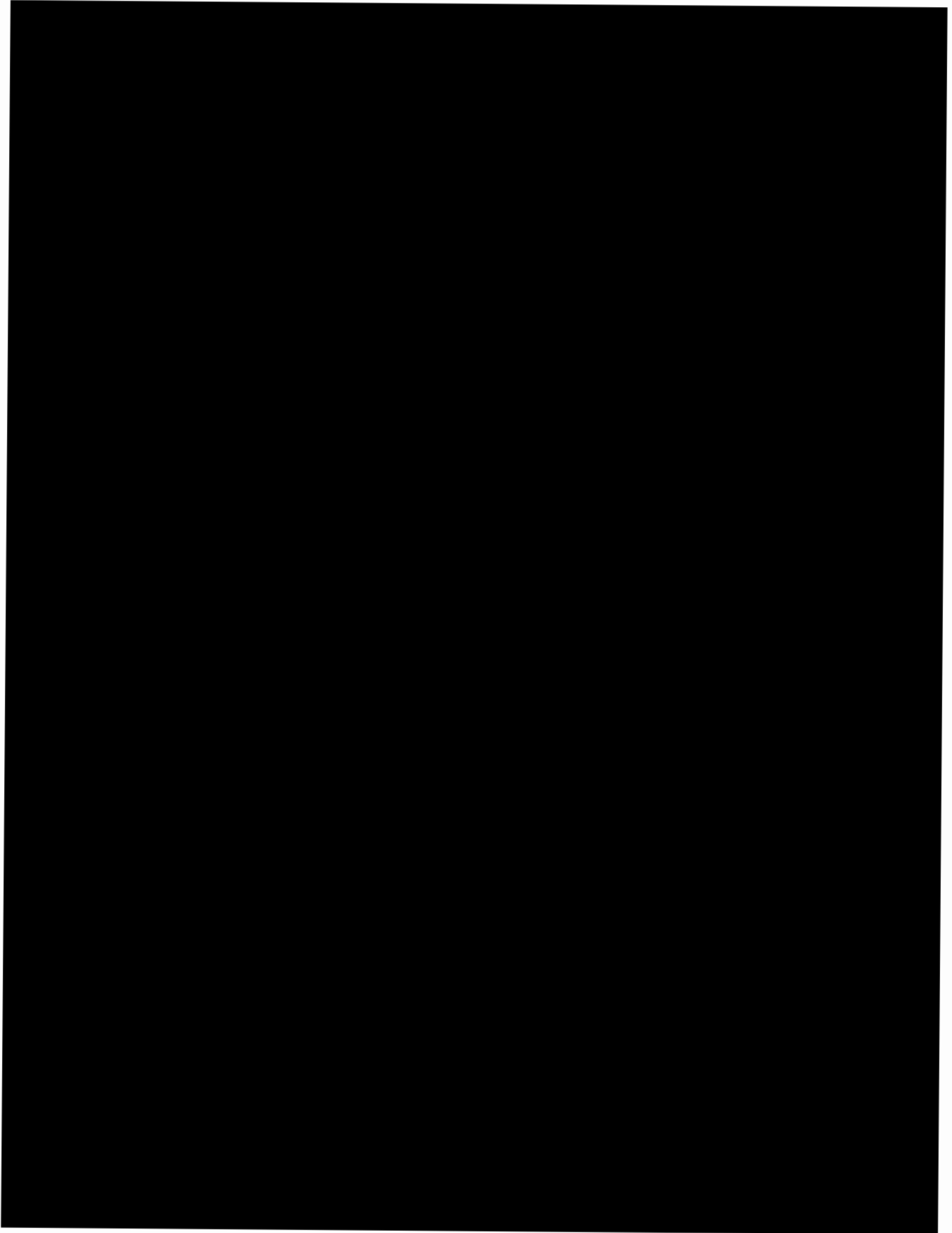
PowerPlan, Inc.'s Identification of Trade Secrets PowerTax



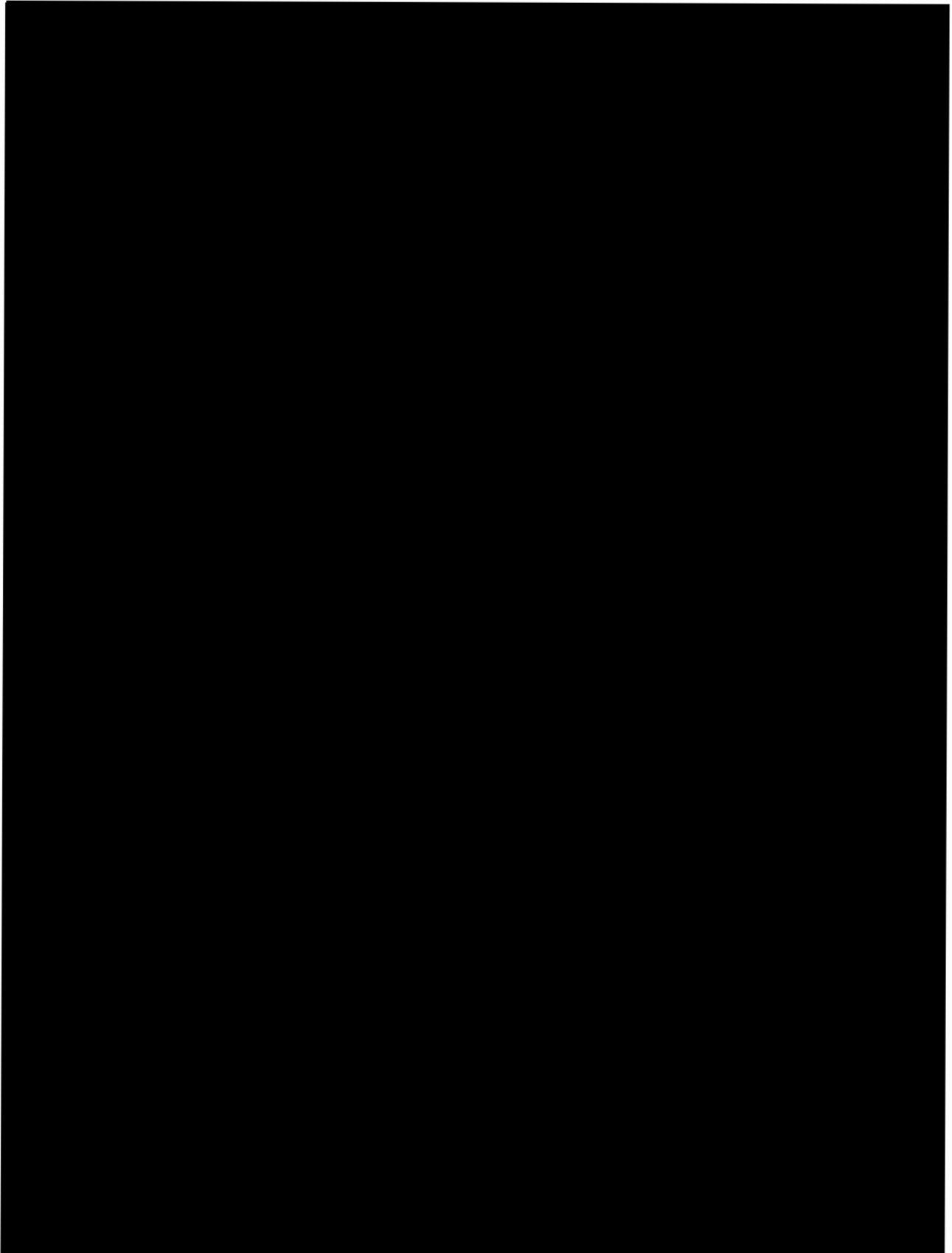
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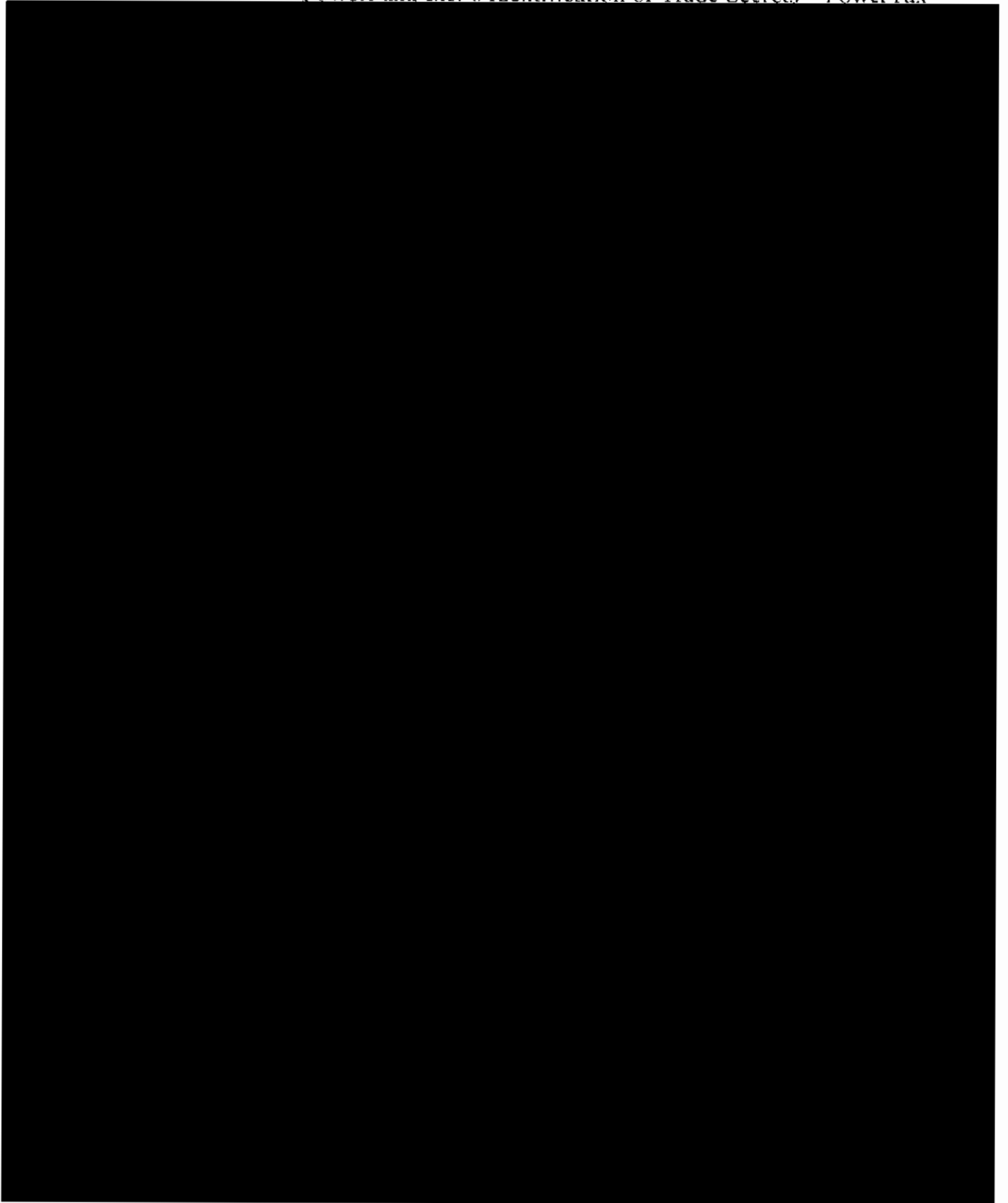
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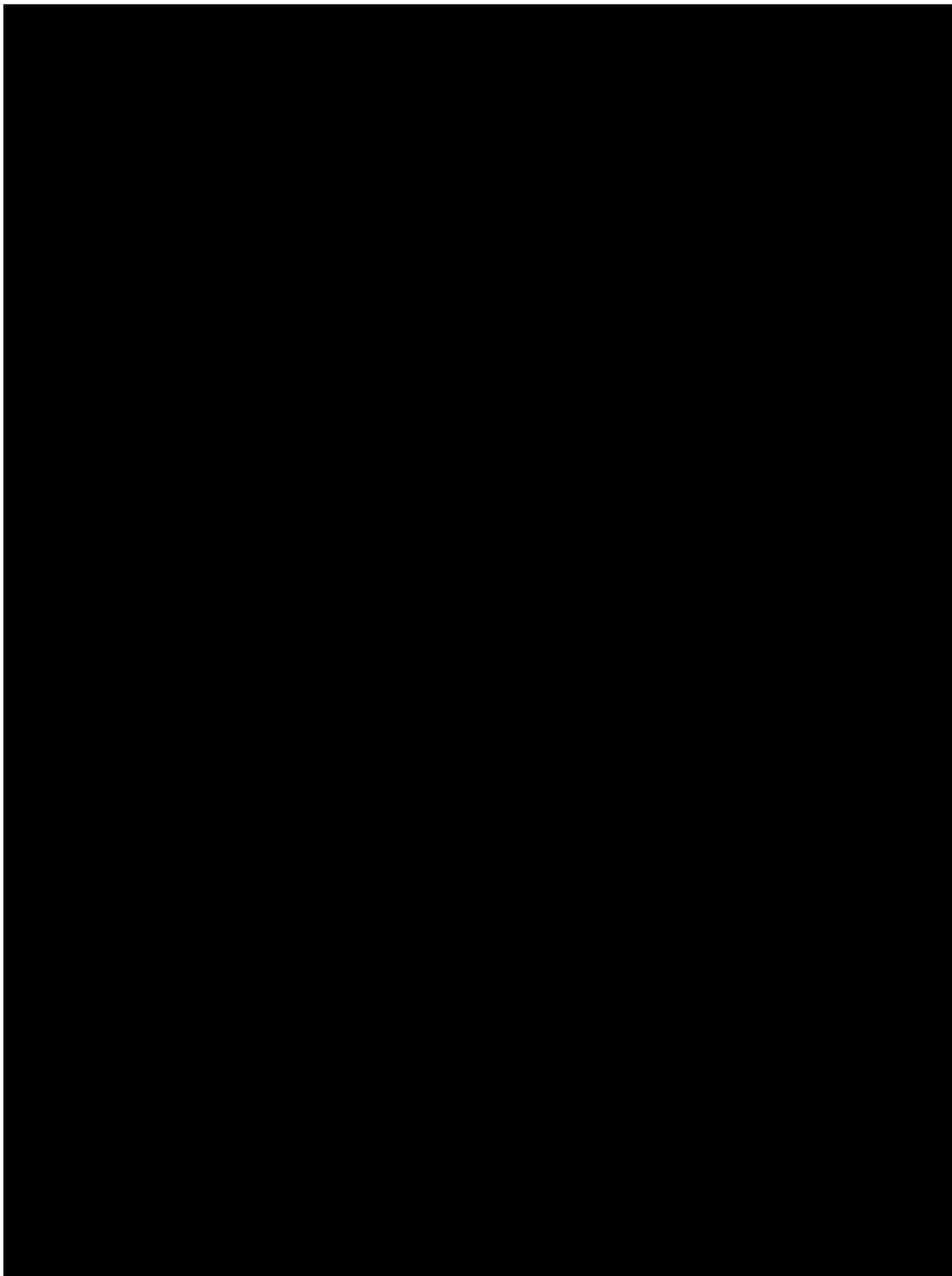
PowerPlan, Inc.'s Identification of Trade Secrets – PowerTax



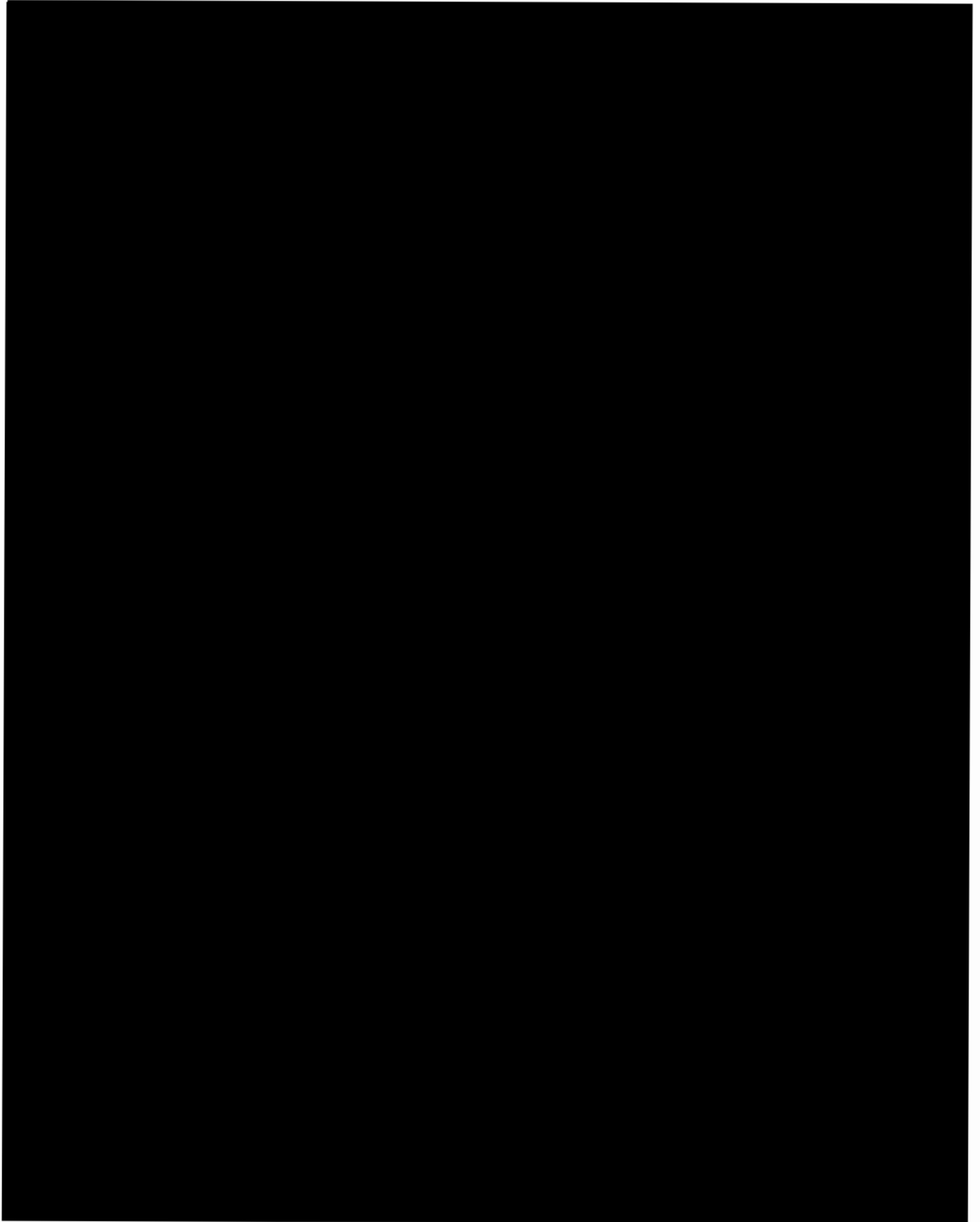
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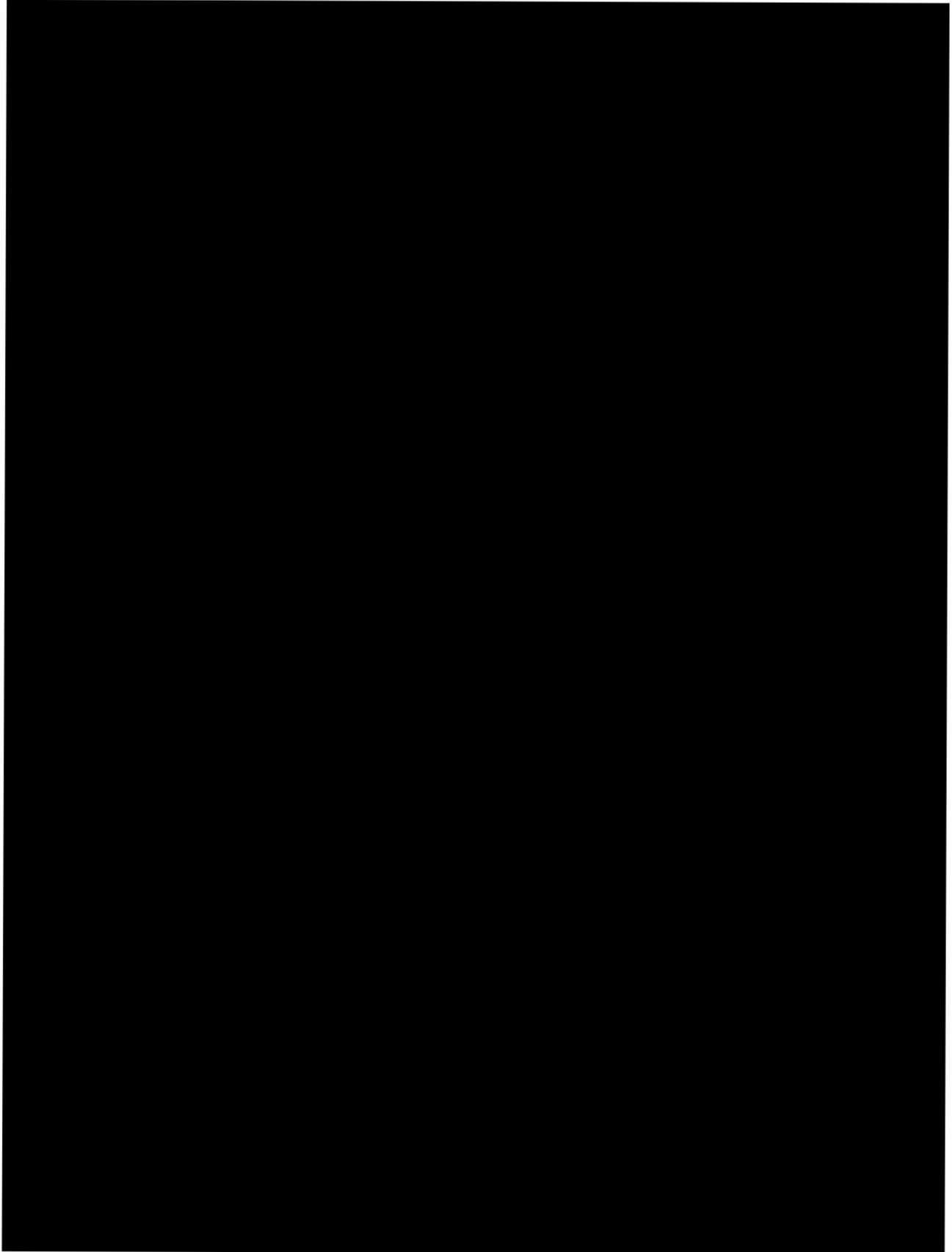
PowerPlan, Inc.'s Identification of Trade Secrets – PowerTax



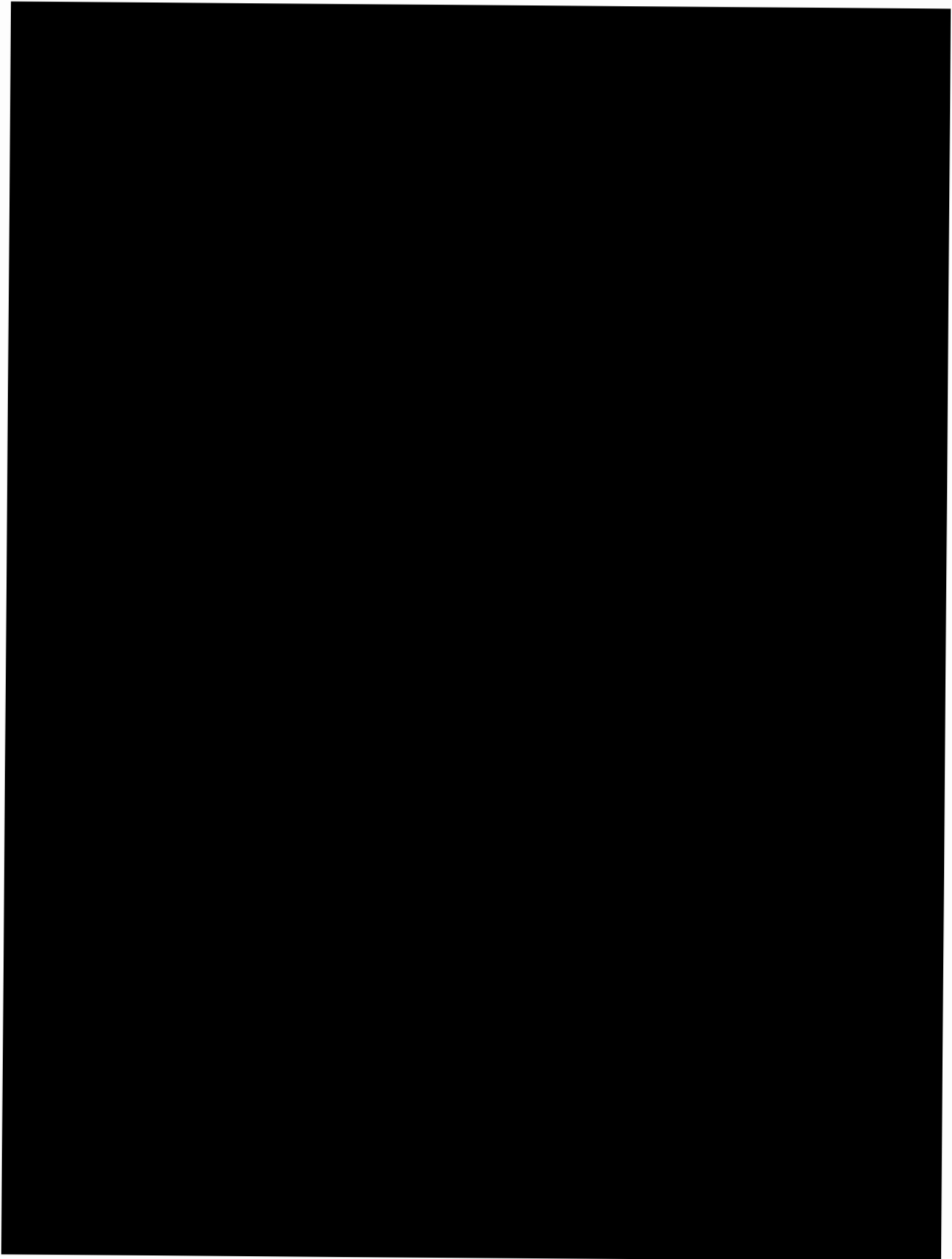
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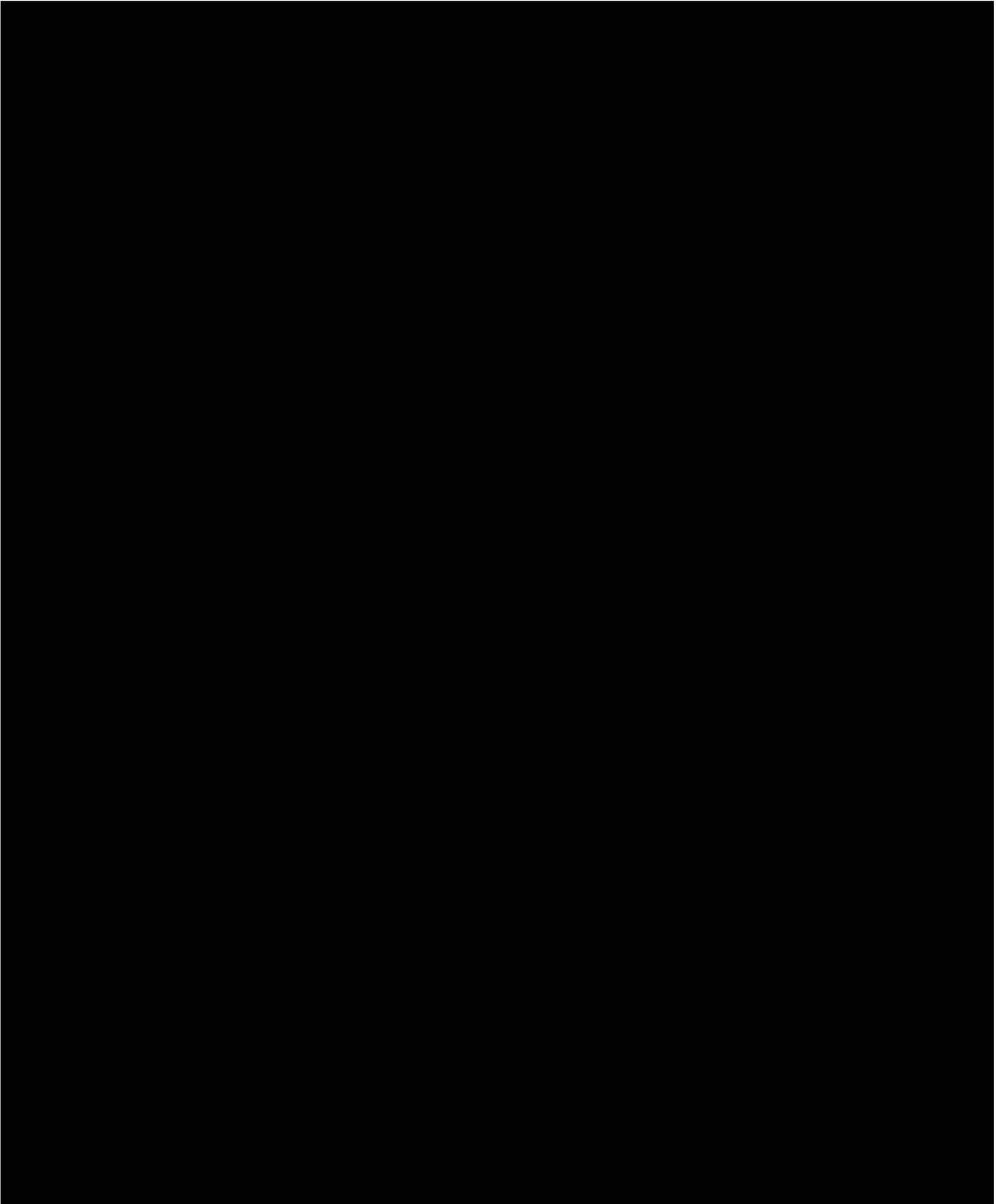
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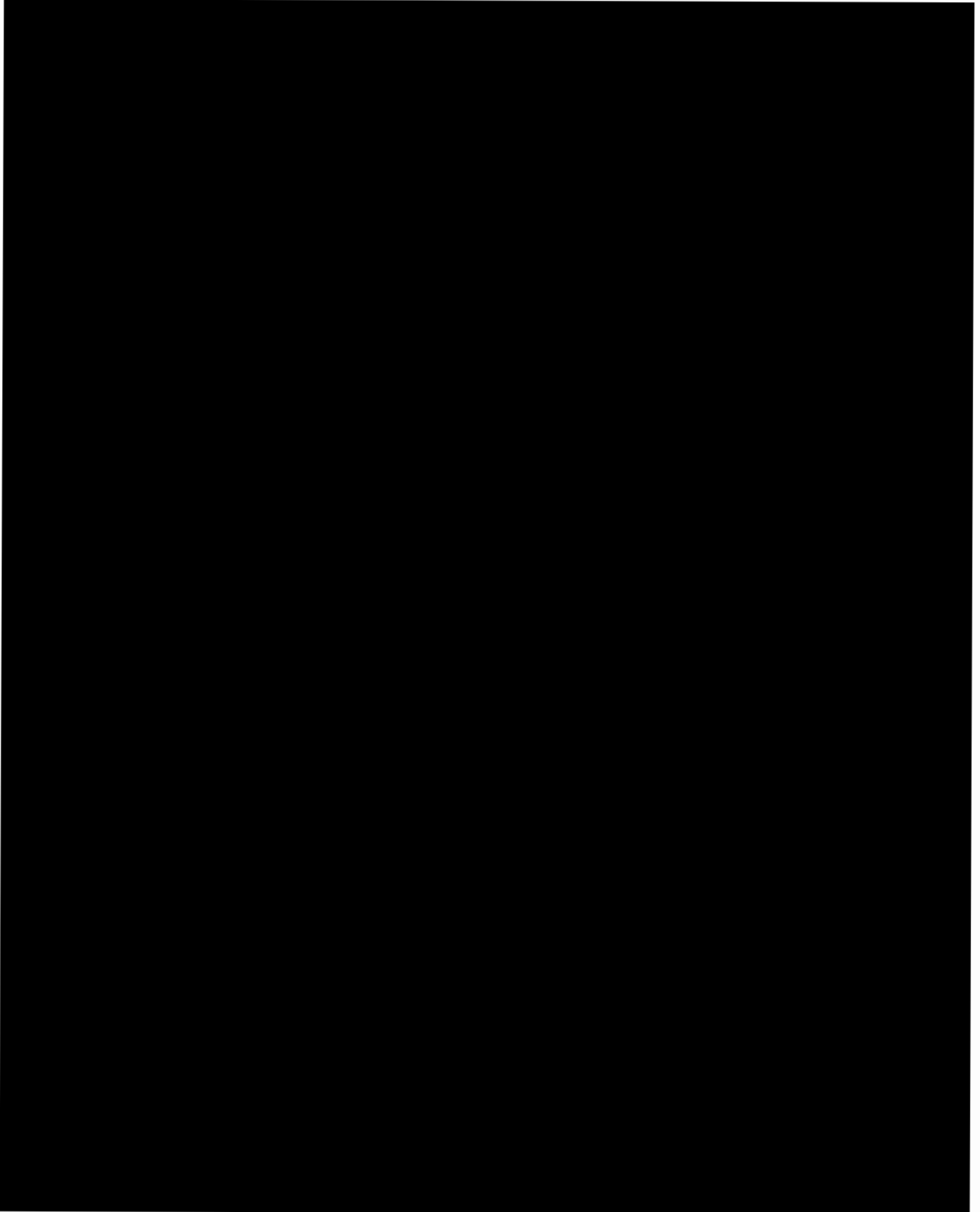
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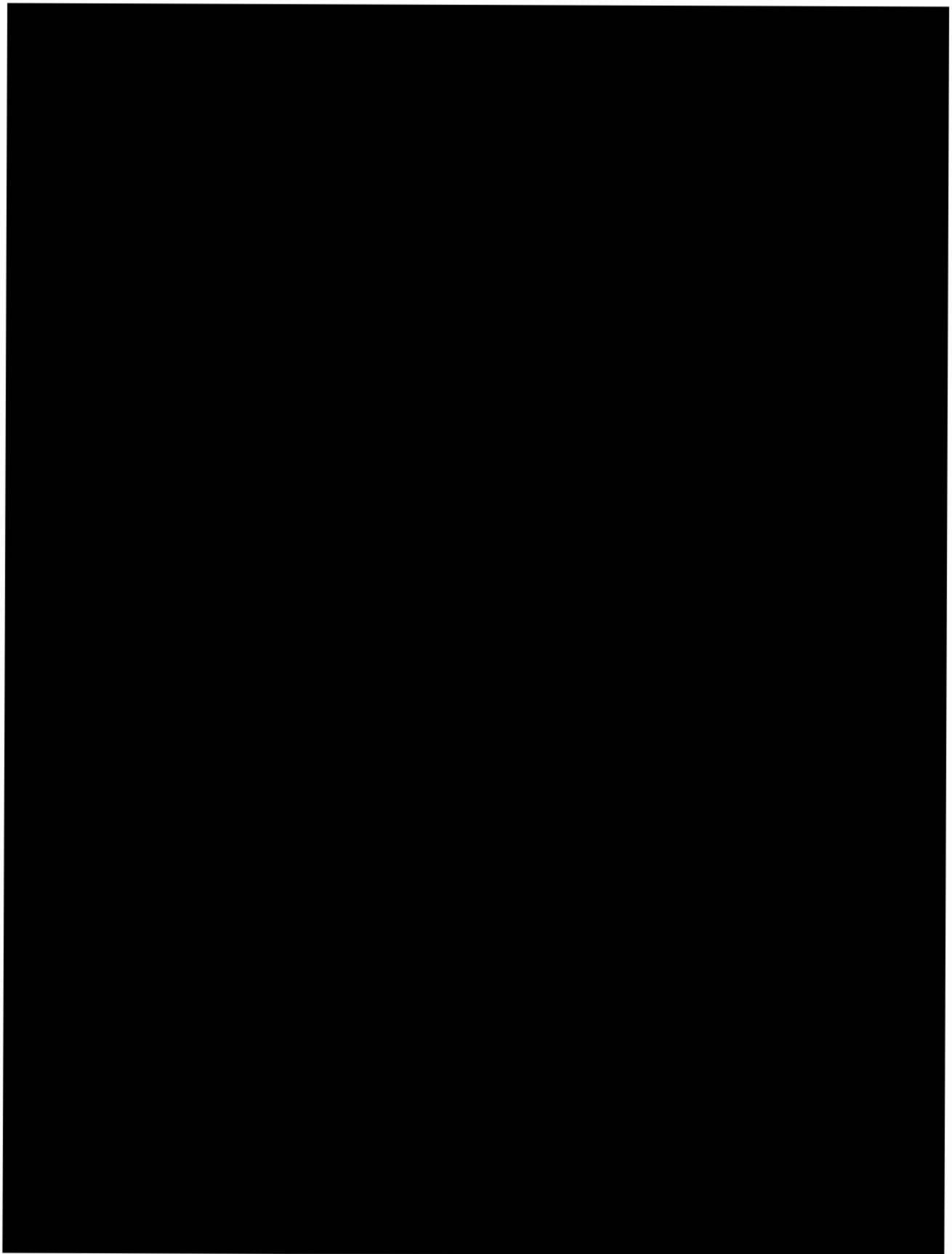
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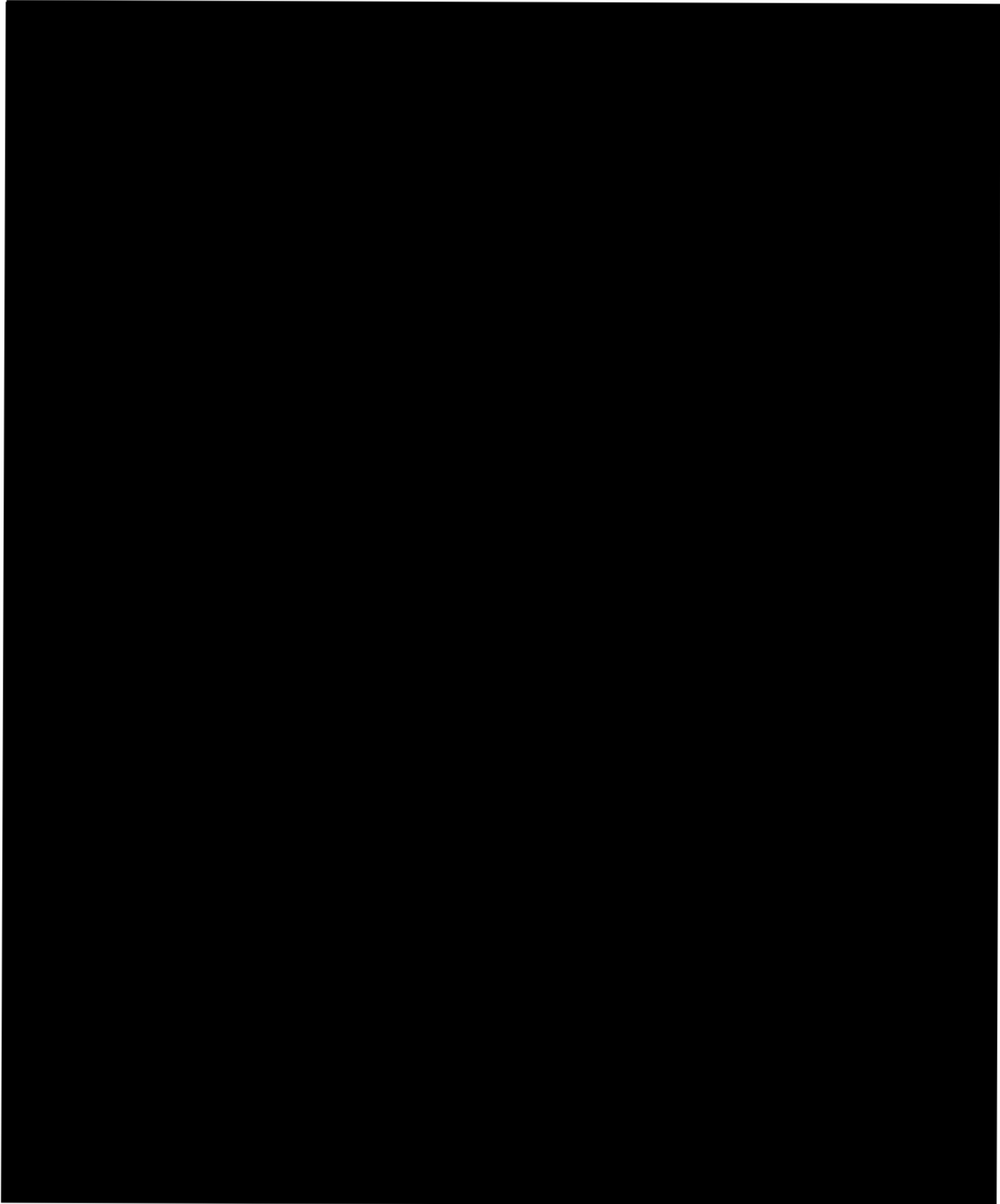
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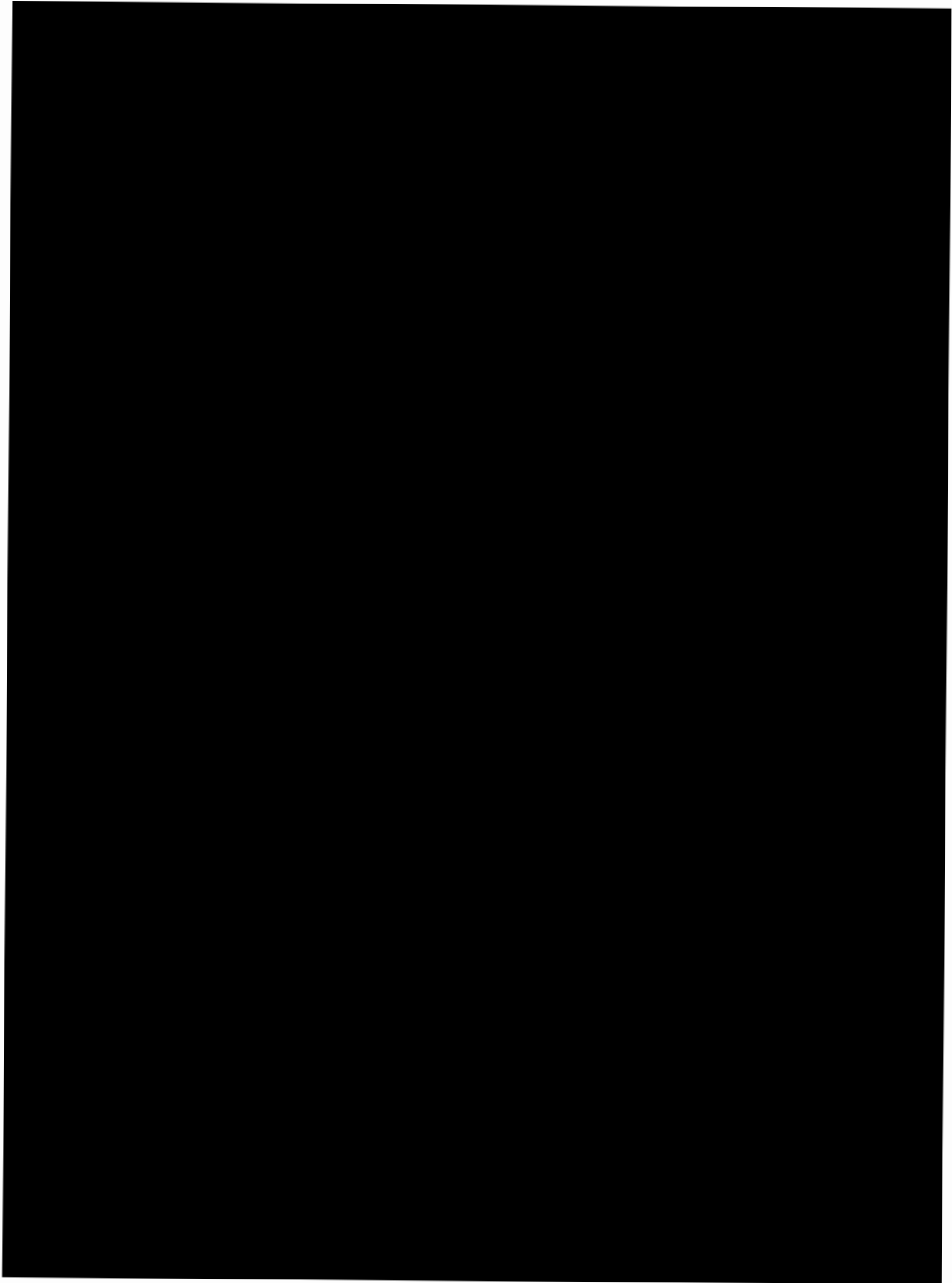
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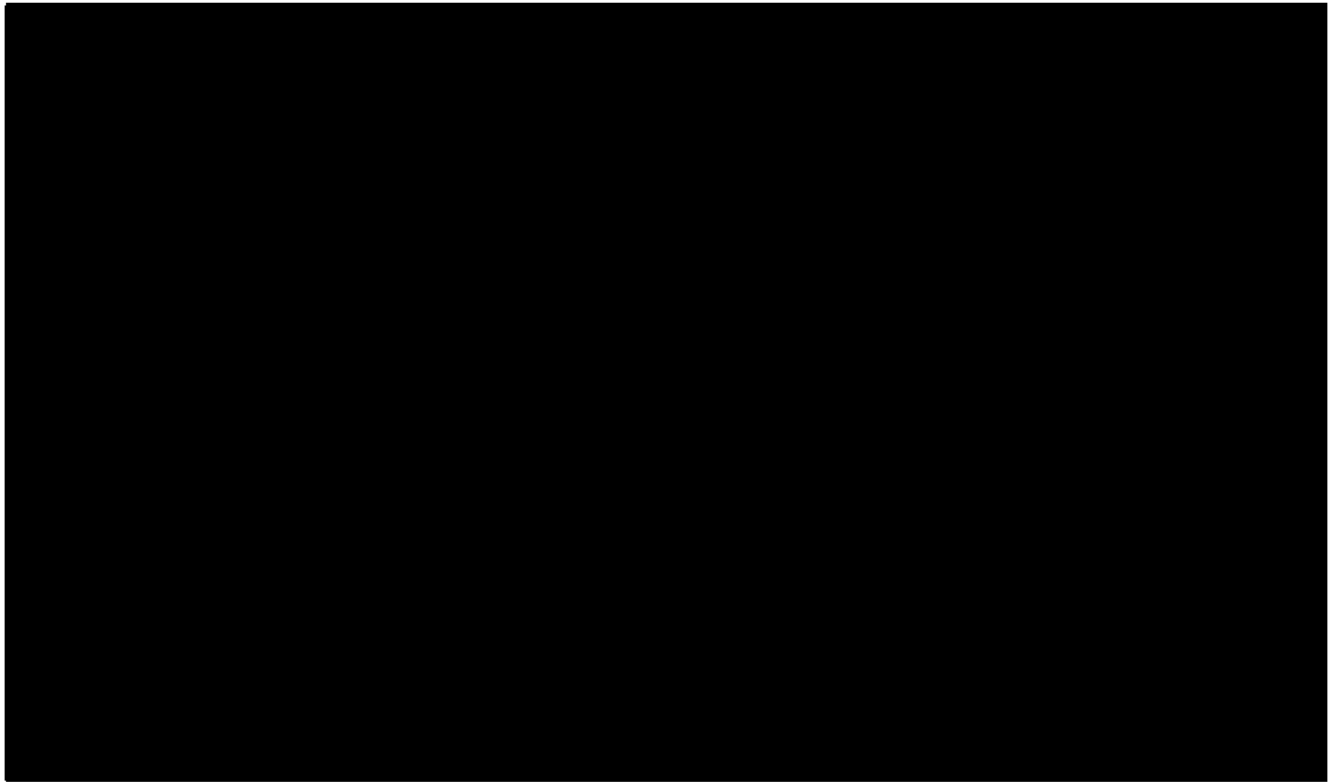
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PowerPlan, Inc.'s Identification of Trade Secrets – PowerTax



PowerPlan, Inc.'s Identification of Trade Secrets PowerTax



Message

From: Jim Dahlby [jdahlby@pwrplan.com]
Sent: 2/14/2019 8:48:55 AM
To: Joe Gomes [Joe.Gomes@powerplan.com]
Subject: Re: President's Club - Extra Spot

I was thinking about the RCC discussion on meeting or not with Jon and one thing that comes to mind is comments from EAB.

Our customers historically complained that with our rates and no alternatives in the market they felt we had them over the barrel. The SVP of tax from Exelon said that people like the competition and it forces us to provide a higher quality experience. So the concerns from various people are what is perception from utility market, you are probably sensing hesitation from people on being aggressive.

I think a concern is that if people get upset with our tactics the industry could side with Jon, then they will not upgrade stay on old versions and not look to expand to new modules or platform.

I'm going to flush out a pro / con with a few more perspectives on short and long term and I can share that with the exec team. Matt, Brandon and Drea all would have some perspectives.

Jim Dahlby

(m) +1.678.269.7950

Sent from mobile device.

On Feb 14, 2019, at 8:32 AM, Joe Gomes <Joe.Gomes@powerplan.com> wrote:

Drea will be joining this elite group (and raising the group average IQ / class score by at least 15% with her attendance).

Welcome Drea and Sully!

<and no.. I'm not on the meds yet...>

Joe Gomes

Office: +1 678 223 2748
 Mobile: +1 404 815 9627
jgomes@powerplan.com
PowerPlan.com

<image002.png>

From: Lake Wilson
Sent: Wednesday, February 13, 2019 3:03 PM
To: Joe Gomes <Joe.Gomes@powerplan.com>
Subject: President's Club - Extra Spot

Joe,

We still have 1 extra spot for President's Club. Paul mentioned that you might want to fill it, so I'm just following up. I realize we are just over 2 weeks out now and it might be hard at this point, but just let me know.



Thanks!

Lake Wilson

Office. +1 678.202.1696

lwilson@powerplan.com
PowerPlan.com

<image001.png>

Message

From: jdahlby@pwrplan.com [jdahlby@pwrplan.com]
Sent: 2/19/2021 9:22:22 AM
To: John Ericson [jericson@pwrplan.com]
Subject: Re: Aqua RFP

Makes sense, any thoughts on bundling license discounts based on services purchase given it lowers our risk?

Jim Dahlby

(m) +1.678.269.7950

Sent from mobile device.

On Feb 19, 2021, at 9:07 AM, John Ericson <jericson@pwrplan.com> wrote:

During this final negotiation, I'd prefer not to expose her to someone that has ability to say a hard Yes or No over the phone until we finalize the pricing. Afterward, absolutely.

John...

John Ericson
PowerPlan, Inc.

Mobile +1 817-513-3642
jericson@pwrplan.com
PowerPlan.com

From: Jim Dahlby <jdahlby@pwrplan.com>
Sent: Friday, February 19, 2021 8:55 AM
To: Jim Duffy <jduffy@pwrplan.com>
Cc: Jon Joury <jjoury@pwrplan.com>; John Ericson <jericson@pwrplan.com>; Skip Fowler <Skip.Fowler@powerplan.com>
Subject: Re: Aqua RFP

Any value in giving Ruth an audience with an executive?

Jim Dahlby

(m) +1.678.269.7950

Sent from mobile device.

On Feb 18, 2021, at 6:52 PM, Jim Duffy <jduffy@pwrplan.com> wrote:

I talked to John too...

My gut is that Ruth is just shaking us down for the best deal possible. Are there other vendors out there that could do some of this work? Sure. Eventide has a history there, and if RCC or Lucasys got the RFP I'm sure they would throw their



hat into the ring. Lucasys would probably be aggressive in their bid too. But based on how this sales cycle has been handled by John/Jon, I feel that we're absolutely the preferred vendor.

So is there a real threat to us losing this business? Maybe, but I would bet against it. So would we win if we dig our heels in and stand firm on price? Yes I think so. But if we can give them a little more, we give Ruth a win and make the rest of the sales cycle much easier. And I see real value in giving Ruth a win. She's fought us at every possible turn in the past, and our business supporters at Aqua had to successfully win the PowerPlan battle against her. If we can show her some love here, it could open a door to building a very important relationship that we can leverage for years to come.

Does anyone feel differently?

One additional out-of-the-box thought- is there any way to get them to agree to **evaluate Regulatory** during this project... even if they don't pay for it? In other words, we give them a discount, and they agree to let us try and sell Reg to them. Maybe a proof-of-concept for one of their important jurisdictions that could have a rate case coming up in the next 2-3 years?

Thanks,
Jim

Jim Duffy
Vice President – Strategic Accounts

Mobile: +1 202.340.4164
Jim.Duffy@PowerPlan.com
PowerPlan.com

<image002.png>

From: Jon Joury <jjoury@pwrplan.com>
Sent: Thursday, February 18, 2021 4:16 PM
To: John Ericson <jericson@pwrplan.com>; Skip Fowler <Skip.Fowler@powerplan.com>
Cc: Jim Duffy <jduffy@pwrplan.com>; Jim Dahlby <jdahlby@pwrplan.com>
Subject: RE: Aqua RFP

I synced with John,

He is going to circle back with Ruth based on what we discussed which is essentially recapped below. And then we will go from there.

Jon Joury
Director, Professional Services

Mobile: +1 404.926.6687
Jon.Joury@powerplan.com

<image003.png>

From: Jon Joury
Sent: Thursday, February 18, 2021 3:30 PM
To: John Ericson <jericson@pwrplan.com>; Skip Fowler <Skip.Fowler@powerplan.com>
Cc: Jim Duffy <jduffy@pwrplan.com>; Jim Dahlby <jdahlby@pwrplan.com>
Subject: RE: Aqua RFP

Thanks for the feedback John.

I met with Skip and Joost briefly and with some adjustments and moving to [REDACTED] rate discount from [REDACTED] we can take off [REDACTED] to get to a [REDACTED] total. That is about the best we can do price wise.

We think we need to challenge Ruth a bit around validating scope and making sure that we have apples t apples comparison. At a minimum they need to consolidate systems, convert in data and setup integrations. They also requested optional things such as adding on some tax modules for certain companies and enhancing capital budgeting. It could be the other responder is not incorporating any of the other items in outside of the minimum, even though the RFP does specifically call those points out.

I am pretty confident that no other vendor could do the full scope of work proposed on their own. It touches so many areas plus it has the HANA adapter. Furthermore, they are on an extremely tight timeline and we already have a leg up with ramp having done the assessments to accelerate design. Another vendor would need several additional weeks to ramp up putting the whole project at risk.

Jon Joury
Director, Professional Services

Mobile: +1 404.926 6687
Jon.Joury@powerplan.com

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From: John Ericson <jericson@pwrplan.com>
Sent: Thursday, February 18, 2021 1:40 PM
To: Jon Joury <jjoury@pwrplan.com>; Skip Fowler <Skip.Fowler@powerplan.com>
Cc: Jim Duffy <jduffy@pwrplan.com>; Jim Dahlby <jdahlby@pwrplan.com>
Subject: Aqua RFP

I spoke to Ruth. She wants a further discount. Her reasoning was that she got responses from other vendors...she mentioned one with ex-PP employees and strong resumes (RCC?). She said their cost was almost half of ours. I told her that they must have severely underestimated the project and they would hit her up for big change orders. I also said that their rates are similar to ours, so it just didn't make sense if they wanted to be successful.

In the end, she said that "people are looking at those numbers and considering them". She also expressed that she wanted to go with PowerPlan but we needed to sharpen our pencil.

Let's set up some time to discuss.

John...

John Ericson
Strategic Account Executive

Mobile: +1 617-513-3642
jericson@pwrplan.com
PowerPlan.com

<image003.png>

Message

From: jdahlby@pwrplan.com [jdahlby@pwrplan.com]
 Sent: 9/1/2021 8:51:33 PM
 To: Nathaniel Gburek [ngburek@pwrplan.com]
 Subject: Re: Conversation with Brett on UPPCO

Interesting...let's chat on how we might present this.

Jim Dahlby

(m) +1.678.269.7950

Sent from mobile device.

On Sep 1, 2021, at 6:51 PM, Nathaniel Gburek <ngburek@pwrplan.com> wrote:

Jim

Brett had a few comments on the UPPCo approach, you may be aware of some of these already through separate conversation with Brett

- Only RCC work effort passing through subcontracting is the work that requires access within the timeframe of the overall tech upgrade
- Can we understand the RCC timelines for the tax and asset remediation work? Can we glean that tomorrow from RCC?
- Ideally, to eliminate risk, the upgrade and RCC effort would not be mixed to allow for easy testing issue triage should they arise
- If project timelines are mixed, there could finger pointing as to issue triage ownership
- Fall Back Option: Let RCC do the upgrade work as well (Expand the Pie for RCC)
- rate cut on the RCC side (20%) of original rates
- helps alleviate PowerPlan resource challenges, PowerPlan gets a margin on the upgrade
- Scope: all prof services minus PM where RCC has skills
- Exclusions: integration redesign to eliminate VPN tunnel

Thanks,

Nathaniel F. Gburek

Sr. Alliances Manager, Global Strategic Alliances

Mobile: +1 836.671.8949

ngburek@pwrplan.com

PowerPlan.com

<image(X).png>



Message

From: jdahlby@pwrplan.com [jdahlby@pwrplan.com]
Sent: 2/17/2019 10:06:31 PM
To: Joe Gomes [Joe.Gomes@powerplan.com]
Subject: Re: RCC/PPL Potential Impact & Recommendations

Paul said he plans to share with PPL on Tuesday. I don't see any reason to stop that communication but wanted to confirm you say that comment.

Brandon and I spoke on Friday and he was collecting the notes and actions after getting back from PTO.

Jim Dahlby

(m) +1.678.269.7950

Sent from mobile device.

On Feb 17, 2019, at 9:57 PM, Joe Gomes <Joe.Gomes@powerplan.com> wrote:

I have asked Brandon to coordinate efforts with the functional owners across all of the swim lanes (hr, legal, dev, etc). He has been briefed on our offsite meeting, and will be running point on this project for the exec team.

We need to discuss who should own building a partner program. If it is going to change alliance team focus, then it might need another owner.

We can add this topic for weds.

Thanks,
 Joe

Get Outlook for iOS

From: Drea Toretta <dtoretta@pwrplan.com>
Sent: Sunday, February 17, 2019 7:16 PM
To: Paul Crist; Matt Crye; Brandon Tubandt; Brent Burns; Elizabeth Cowart; Jim Dahlby; Jim Ogilvie; Joe Gomes; Joost Rutten; Laurie Hawkins; Neil Kimber; Sarah Park; Skip Fowler
Subject: RE: RCC/PPL Potential Impact & Recommendations

Paul --

When are we re-grouping on this again? Ideally if we want some pro-active communications would like to meet with you, Matt, Dahlby and Skip to plan accordingly. Tomorrow will be out of pocket for a customer meeting – but please keep me posted.

Thanks.

Drea Toretta

Office: +1 678.202.1680

<image002.png>



From: Paul Crist

Sent: Saturday, February 16, 2019 11:21 AM

To: Matt Crye <mccrye@pwrplan.com>; Brandon Tubandt <btubandt@pwrplan.com>; Brent Burns <Brent.Burns@powerplan.com>; Drea Toretto <doretto@pwrplan.com>; Elizabeth Cowart <ecowart@pwrplan.com>; Jim Dahlby <jdahlbv@pwrplan.com>; Jim Ogilvie <jogilvie@pwrplan.com>; Joe Gomes <Joe.Gomes@powerplan.com>; Joost Rutten <Joost.Rutten@powerplan.com>; Laurie Hawkins <lhawkins@pwrplan.com>; Neil Kimber <nkimber@pwrplan.com>; Sarah Park <spark@pwrplan.com>

Cc: Paul Crist <pcrist@pwrplan.com>

Subject: RCC/PPL Potential Impact & Recommendations

Following our discussion on RCC/PPL, Matt, Duffy and I worked through the talk-track for PPL and a call is scheduled for the morning of Tuesday, 2/19 to communicate our position with PPL.

During the meeting we discussed the potential ramifications of the communications with our broader IOU customers. As was discussed a new AGA/EEL PowerPlan user group has been formed. PowerPlan has benefited over the years of the tight collaboration and communication between our IOU customers, but as we know it is a double edged sword. We should anticipate that the communication of our position to PPL will be quickly communicated to people involved in the AGA/EEL PowerPlan user group and other PowerPlan IOU customers.

Potential impact includes.

- **Sole-provider Backlash:** Our EAB has expressed dissatisfaction with not having more viable services provider options and have described as 'The PowerPlan hostage crisis.' The new AGA/EEL PowerPlan user group will likely perceive this as a move towards sole provider model.

Recommendations

- **Preemptive Communications** - Consider a preemptive communication plan to the AGA/EEL PowerPlan user group and PowerPlan customers on what we are doing to protect our customers with our Cloud policy and SOX compliance restrictions relative to third party partners. I also think we should develop a talk-track for all PowerPlan employees, so that, as much as possible, everyone is communicating the same message any time a customer or third party of any kind asks about it.

- **Owner - Marketing**
- **Certified Partner Program** - Quickly develop a certified partner program that clearly describes what partners can and cannot do in our Cloud environment. (whether or not RCC is one of those partners isn't terribly important, but zero certified partners will surely cause sales headwinds).
- **Owner - Global Alliances**

- **Lift & Shift Impact:** There are a number of our customers (WEC, Talen, PPL, WGL, AmWater, AEP, Dominion, Entergy, Tucson, ...) that have used and continue to use RCC for services which will cause some of them to not Lift & Shift and sweat their current on-premise Classic install until final sunset. At that point, it's logical to assume these customers will evaluate all options, including PowerPlan New Platform, Utegration, or ERP. There are 10 Lift & Shift opps in the 2019 buckets of opportunity analysis representing [REDACTED] in recurring revenue bookings plan. Taking some or all of our customers working with RCC out of the pool of potential makes delivering on this plan very difficult.

Recommendation

- **Certified Partner Program** - Quickly develop a certified partner program that clearly describes what partners can and cannot do in our Cloud environment. (whether or not RCC is one of those partners isn't terribly important, but zero certified partners will surely cause sales headwinds).
- **Owner - Global Alliances**

- **Whitespace Sales Impact:** RCC actively influences customers to buy our software. As example, PPL \$419k and AmWater \$313k. They have an interest in expanding the solution footprint and expanding their services revenue. If that changes, they may wield their influence to deter customers or, when possible, promote other software vendors and solutions to work with. While they do not have a competing/replacement product, they can exert influence in a number of ways that will impact our software sales pursuits.

o **Recommendation**

- Certified Partner Program – Quickly develop a certified partner program that clearly describes what partners can and cannot do in our Cloud environment. (whether or not RCC is one of those partners isn't terribly important, but zero certified partners will surely cause sales headwinds).
- Owner - Global Alliances

- **Stickiness & Competition:** We are facing numerous competitive threats with Utegration as the most formidable at our SAP IOU customers. Utegration is targeting NA IOU's to sell services and potentially competitive software solutions. AmWater would be a great candidate for the Utegration pitch, if not for the services provided by RCC (which led directly to a software sale for us). RCC helps keep PowerPlan sticky.

o **Recommendation**

- Certified Partner Program – Quickly develop a certified partner program that clearly describes what partners can and cannot do in our Cloud environment. (whether or not RCC is one of those partners isn't terribly important, but zero certified partners will surely cause sales headwinds).
- Owner – Global Alliances

- **Global Alliances Impact:** The development of a Certified Partner Program will require a significant change in priorities for the Global Alliances team – classic solution vs. new platform partner ecosystem development and with it opportunity costs of re-focusing priorities and resource allocation.

o **Recommendation**

- Shift priorities and commence work asap.
- **RCC Meeting:** If Jonathan Williams, President, RCC is willing to meet, it is recommended that we take the meeting. As discussed, there seems to be very little downside and we might learn valuable information and who knows, find a mutually beneficial path forward.

o **Recommendation**

- Schedule the meeting with Jonathan Williams

I welcome any feedback and additional thoughts on potential impact and recommendations to mitigate it.

Regards;

Paul Crist
VP Global Sales
pcrist@pwrplan.com
616.813.6150



PLAN

Message

From: Jim Dahlby [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D216F1B123C546B280D24E68D8718750-JIM DAHLBY]
 Sent: 10/4/2021 12:19:52 AM
 To: Nathaniel Gburek [ngburek@pwrplan.com]
 Subject: Re: [EXT] Patch/DB Access

is 11/19 decision date? Meaning we need to have agreed to terms for RCC signed by then?

Jim Dahlby

(m) +1.678.269.7950

Sent from mobile device.

On Oct 3, 2021, at 9:21 PM, Nathaniel Gburek <ngburek@pwrplan.com> wrote

Jim

Welcome back! I have formalized the next steps at PPL, largely in line with your pptx sent to leadership but with actual dates. I spoke with Logan & John as well as back channeled with Jeff Brook @ RCC. I developed the plan below but I did not mobilize internally, specifically with John or Jonathan.

PPL Notes

- PPL keen to make quick decisive decision on future of the cloud ASAP, no later than mid Nov
- Customer looking to build confidence in PowerPlan offer, all talk right now
- [REDACTED] CAM program ongoing – RCC/PowerPlan component small \$ but if cloud issue risks overall timeline, customer will pull out of cloud to facilitate RCC work & larger project
- RCC (Joel Sechler) was not dismissive of the verbal cloud access offer, proof is in the physical offer and legal arrangement to support

Can you give feedback on the plan below? If good, would you like to communicate the urgency and timelines below to those responsible or can I do that with you on copy?

Here are the next steps I identified:

Identify next steps:

- 1) Build out Access Package – 10/13 initial draft; John Budala responsible
 - a. Spin up physical instance with toolsets to test and cost
 - b. Think about the long term setup – environment up MoM
- 2) 3rd party access agreement preparation – 10/13 draft; Jonathan Sucher responsible
 - a. Do we want to work on the request form for customer?
- 3) Develop Timeline to Delivery for PPL – timeline socialized with PPL by 10/8
 - a. Complete by 11/19 stated deadline, stretch goal: by end Oct
- i. <!--[if !supportLists]--><!--[endif]-->10/13 – initial drafts
- ii. <!--[if !supportLists]--><!--[endif]-->10/22 – final offer ready for 3rd party/customer visibility
- iii. <!--[if !supportLists]--><!--[endif]-->Last week of Oct – scheduled session with customer



*** Nate's Opinion: PowerPlan must have executable contracts and access trail when presenting to customer ***

Supporting items:

- 1) Project Landscape DB definition for 3rd party role
 - a. Reduced access from pwrplan
 - b. MAllen on PTo another week, maybe 1st draft with another resource
- 2) Formal policy and customer facing collateral
 - a. Utilize the PPL presentation to craft content with Joel
- i. <!--[if !supportLists]--><!--[endif]-->Support policy – procedures for interacting/triaging in cloud
- ii. <!--[if !supportLists]--><!--[endif]-->What is allowed in each environment

Hope you had a good vacation – we can chat in the 9:30 half hour but I plan to get a note our to the wider PPL pursuit team from the thread below. Key folks, John E, Logan M, etc are already on board.

Thanks,

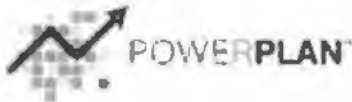
Nathaniel F. Gburek

Sr. Alliances Manager, Global Strategic Alliances

Mobile: +1 336.671.8949

ngburek@pwrplan.com

PowerPlan.com



From: John Ericson <jericson@pwrplan.com>

Sent: Monday, September 27, 2021 3:43 PM

To: Jim Dahlby <jdahlby@pwrplan.com>; Nathaniel Gburek <ngburek@pwrplan.com>

Cc: Anthony Beckett <abeckett@powerplan.com>; Jim Duffy <jduffy@pwrplan.com>; Kim Pearch <kim.pearch@powerplan.com>; Logan Morrison <lmorrison@pwrplan.com>; Ted Coulson <ted.coulson@powerplan.com>

Subject: FW: [EXT] Patch/DB Access

Nate, Jim, Jim, Kim,

Please see the note below. PPL is considering bringing PowerPlan back on-premise due to the issues with RCC access. I believe the renew date is 2/1/2023.

Can we discuss current status and our path forward on this?

Thanks,

John...

John Ericson

Mobile: +1 617-513-3642

jericson@pwrplan.com

From: Alexander, Tracy <TAlexander@ppiweb.com>

Sent: Monday, September 27, 2021 3:26 PM

To: Logan Morrison <lmorrison@pwrplan.com>

Cc: John Ericson <jericson@pwrplan.com>; Ted Coulson <ted.coulson@powerplan.com>; Joel Sechler

<JSechler@regulatedconsultants.com>; Wisnoski, Bethany Ann <BAWisnoski@pplweb.com>

Subject: [EXT] Patch/DB Access

Exercise CAUTION when opening links or attachments.

Hi Logan,

I wanted to reach back out on the information you provided to us on Friday regarding RCC losing access to the database. I appreciate you working with your internal teams to find a solution that will allow RCC to have access. What I'll ask is that we target 11/19/2021 as the date for agreed upon terms. While I understand the want to move forward with the patch sooner than later, we cannot sacrifice our current turnaround times.

We know we have a lot of work coming down the pipeline and there are identified risks with RCC losing their current testing capabilities. We just completed the cloud automation initiative and since the financial costs were nominal our executive team would consider bringing it back on prem so that we don't experience challenges with delivery timelines in the future. We will be working in parallel to estimate the approach to bring the instance back on prem so we are ready to pick a path forward on 11/19/2021.

Please let me know if you have any questions.

Thank you,

Tracy

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PLAN



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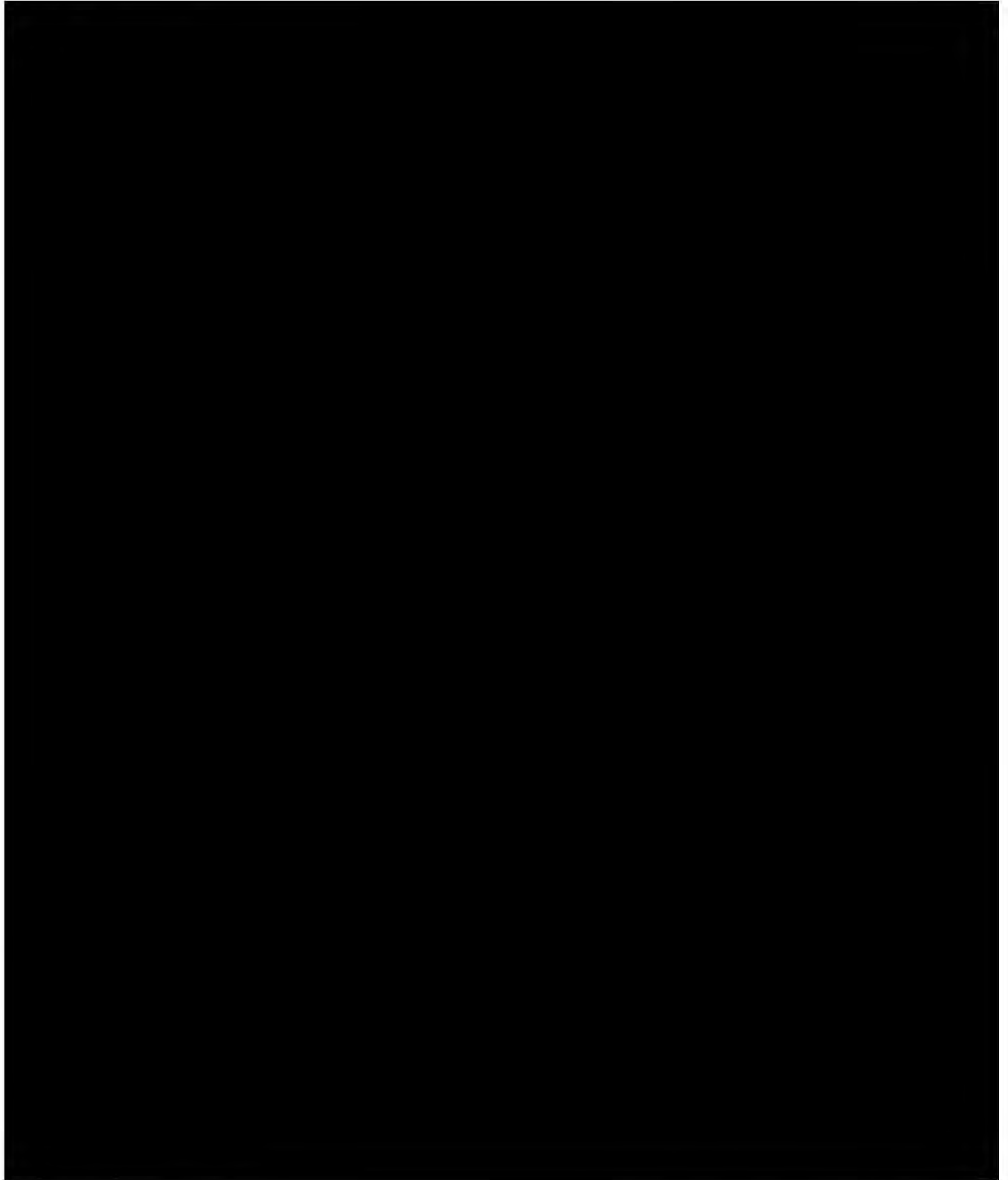
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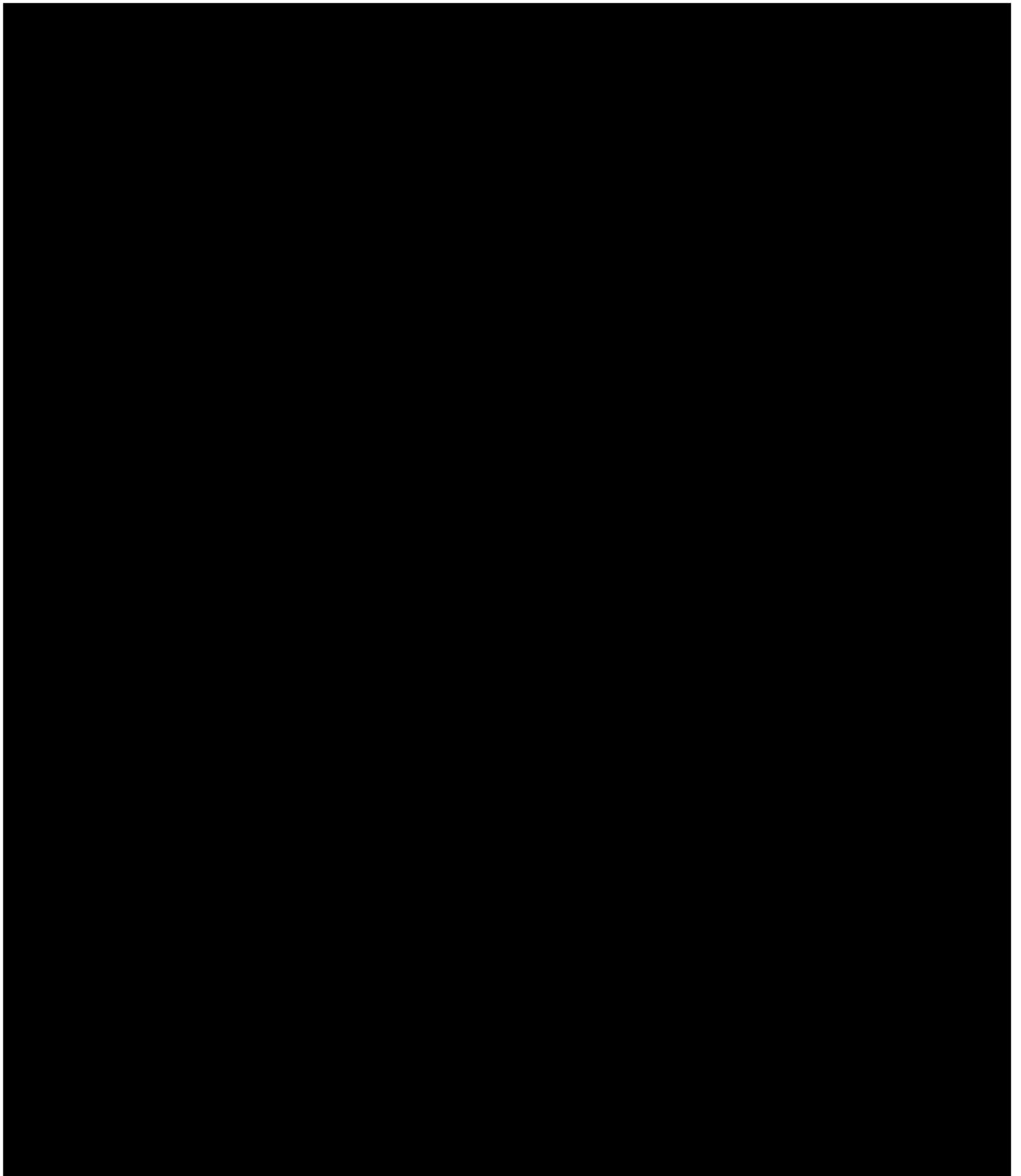
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OUTSIDE COUNSEL'S EYES ONLY
RCC 00901

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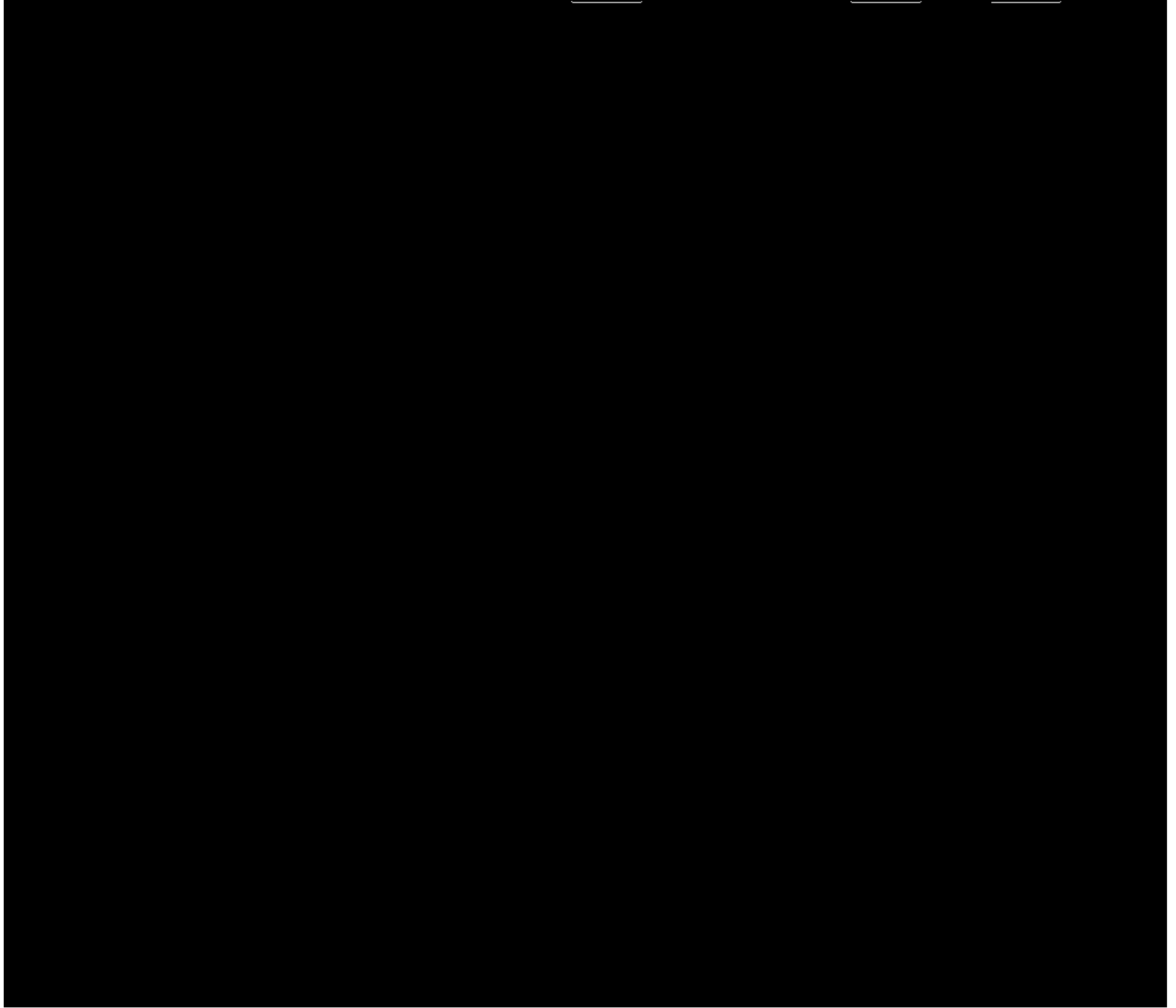
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RCC 00902

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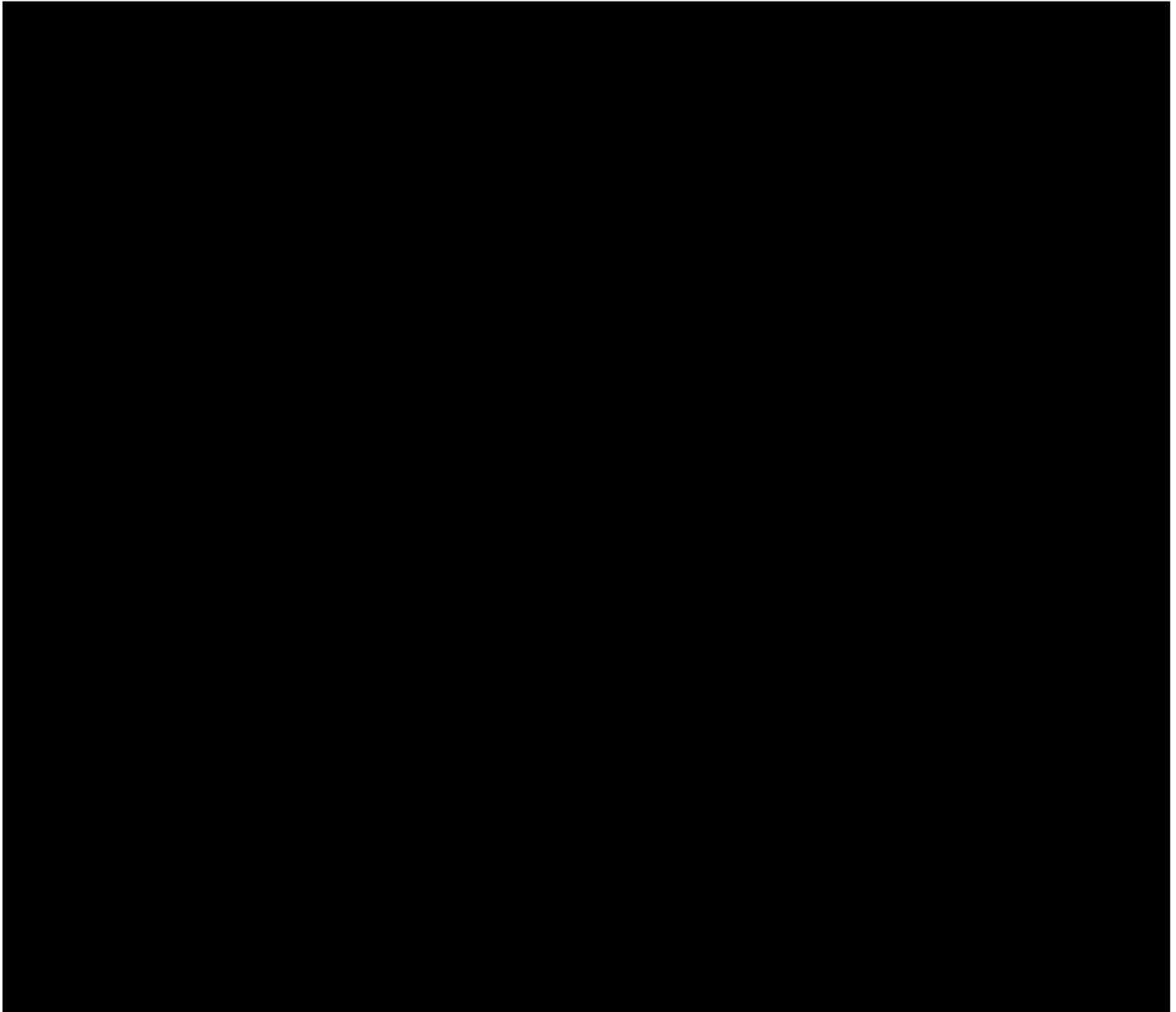
0275502-0 Doc 202 Filed 06/09/23

OUTSIDE COUNSEL'S EYES ONLY
RCC 00903

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PLAN



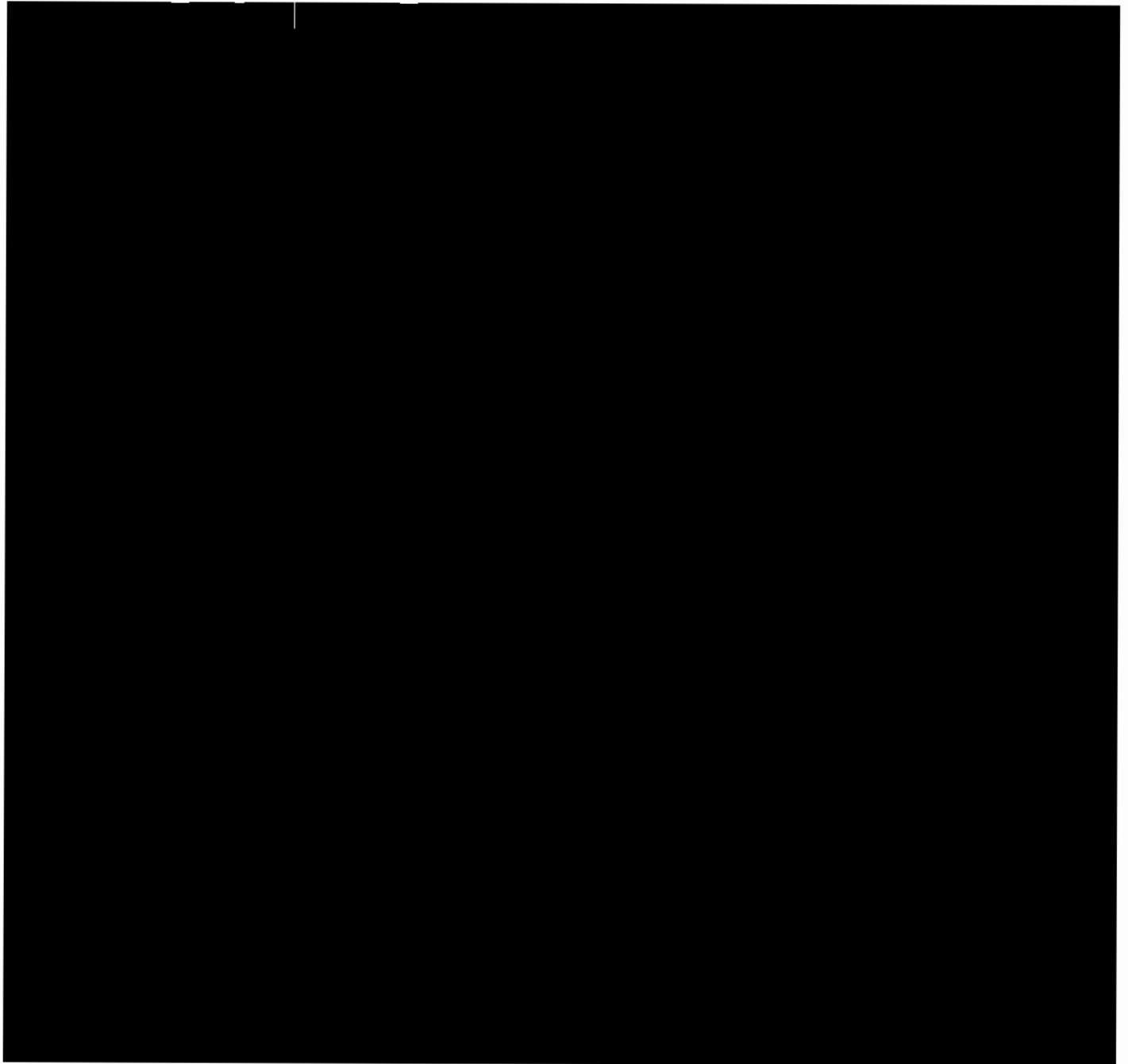
287F692-2 PHS 10/10/2017

OUTSIDE COUNSEL'S EYES ONLY
RCC 00904

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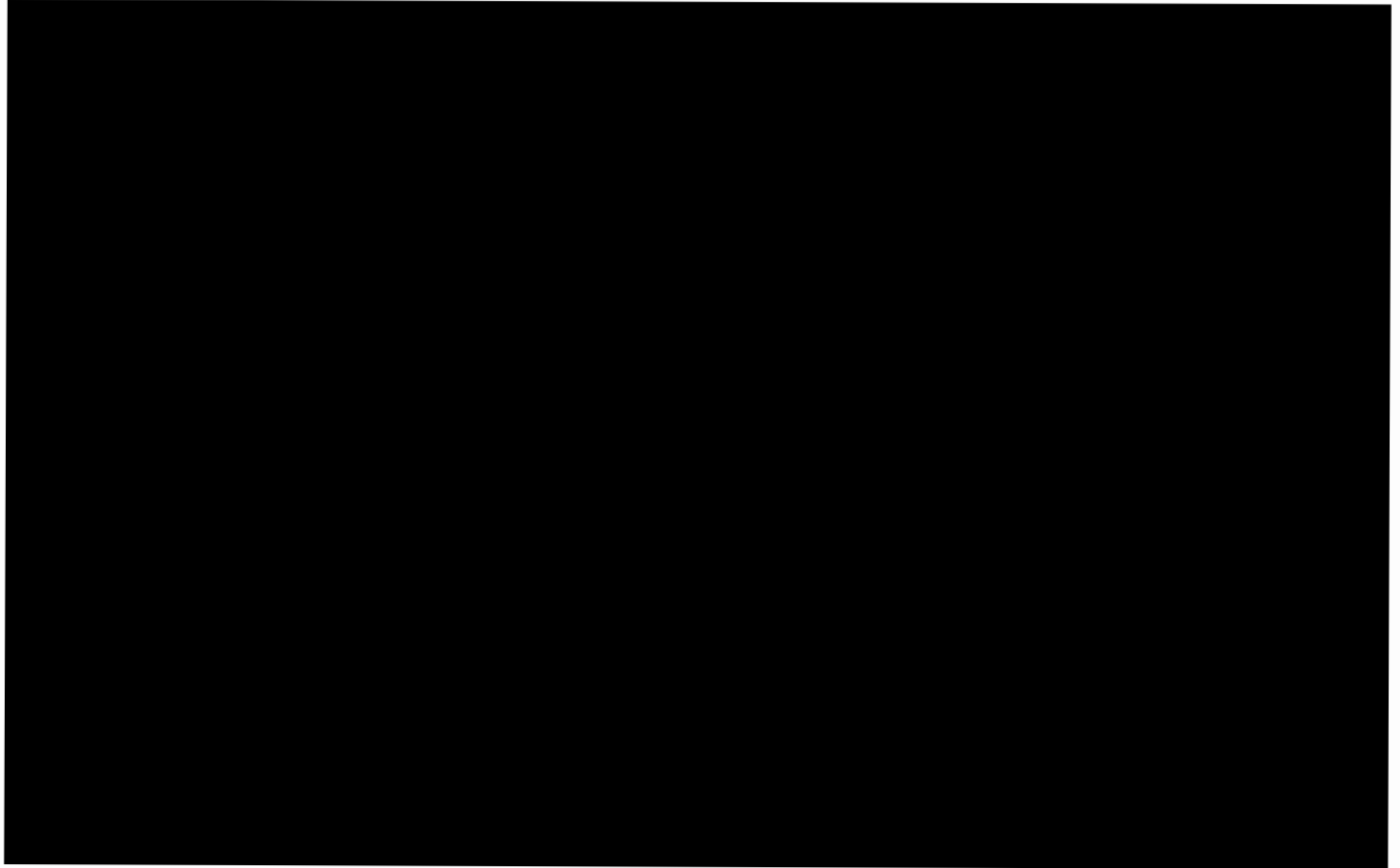
19275592-3 CIVIL 2023-0212

OUTSIDE COUNSEL'S EYES ONLY
RCC 00905

DocuSign Envelope ID: 62B78710-037C-4F41-938F-C24E2FB4F3C5



PLAN



Message

From: Jim Dahlby [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D216F1B123C546B280D24E68D8718750-JIM DAHLBY]
Sent: 2/16/2021 10:31:03 AM
To: Jamie Carr [jcarr@pwrplan.com]
Subject: RE: PS Estimation Process Update

That was really me thinking about Outlook 365, I didn't know if meeting response got posted back to meeting attendees. I was worried about a couple things I've said in meeting replies recently.

Jim Dahlby

Mobile: +1 678.269.7950
jdahlby@pwrplan.com

From: Jamie Carr <jcarr@pwrplan.com>
Sent: Tuesday, February 16, 2021 10:27 AM
To: Jim Dahlby <jdahlby@pwrplan.com>
Subject: RE: PS Estimation Process Update

BCC'ed you, lol. Have faith!

Jamie Carr

Senior Director, Implementation Strategy

Mobile: 330.603.3556
jcarr@pwrplan.com
 PowerPlan.com



From: Jim Dahlby <jdahlby@pwrplan.com>
Sent: Tuesday, February 16, 2021 10:23 AM
To: Jamie Carr <jcarr@pwrplan.com>
Subject: RE: PS Estimation Process Update

Did you BCC me or did it send to everyone on Friday's meeting?

Jim Dahlby

Mobile: +1 678.269.7950
jdahlby@pwrplan.com

---Original Appointment---

From: Jamie Carr <jcarr@pwrplan.com>
Sent: Tuesday, February 16, 2021 10:17 AM
To: Jason Szelest
Subject: Accepted: PS Estimation Process Update
When: Friday, February 19, 2021 11:00 AM-11:30 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting



I don't know who did PowerTax, but I know Jeremy did Provision, and he has no idea how to estimate Provision projects. He expressed this to me while he was doing that. And after doing an all day session with him on Aqua yesterday, I see he hasn't absorbed nearly as much as I had thought over the last few projects we worked on together.

I also did an hour QA on Liberty Yulu yesterday. It was bad to say the least. The one company that's being implemented in Release 1 is a tiny company that I could've converted in a week. Yulu has billed 241 hours. She's also delivering training to Liberty today. Although she can explain basics, she can't answer questions. Her and I discussed that yesterday and she admitted she's going to be in trouble. They have RCC engaged at Empire and if they have RCC review our hours and completed tasks, we're in big trouble. I saw the PowerTax hours billed as well. Massive hours for a small company and Michael had to do and re-do work.

Michael also told me that Southern TBBS is in trouble. I haven't heard anything from Yulu on that. He said that on both Liberty and Southern that on internal calls she describes everything as being on track and no issues. It's not.

Sorry for all the bad news, but this is the reality. "Tell it like it is", right? Lol. I don't have a resolution to this, but I think you need to be aware of the serious risks here. Maybe a CHPK-like solution is needed in the short term. All hands on deck to ensure all these projects get back on track.

I just can't be everywhere.

Happy belated Valentine's Day.

Message

From: Jim Dahlby [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D216F1B123C546B280D24E68D8718750-JIM DAHLBY]
Sent: 9/11/2021 6:28:55 PM
To: Nathaniel Gburek [ngburek@pwrplan.com]
Subject: Re: ConEd Cloud Opportunity & Third Parties

One challenge is Vu has been associated with a software competitor.

What time on Tuesday?

Jim Dahlby

(m) +1.678.269.7950

Sent from mobile device.

On Sep 11, 2021, at 1:00 PM, Nathaniel Gburek <ngburek@pwrplan.com> wrote:

Jim

I received a quick question Friday from Joel and Mark regarding our stance on third party access in PowerPlan's cloud in reference to a future meeting with ConEd. It is well known that Vu Nguyen and another internal contractor utilize significant access granted through the existing on prem solution @ ConEd.

Are you ok Joel/Mark utilizing the same framework presented to UPPCO/RCC @ ConEd to forward that opportunity? The timing on this is relatively urgent, the PowerPlan opportunity team is meeting with ConEd Tuesday and I will be out on family leave by that time, so I wanted to get this on your radar.

From my limited knowledge of the ConEd oppty, subcontracting under a cloud upgrade should in line with the facts and circumstances at UPPCO. The nuance would come in when regarding steady state interaction with the cloud (punted at UPPCO). would we want to continually do subcontracting agreements (annually?) or solve the legal/access components more permanently through some longer-term agreement between the three parties (contractor, ConEd and PowerPlan)?

<image001.jpg>

Thanks,

Nathaniel F. Gburek

Sr. Alliances Manager, Global Strategic Alliances

Mobile: +1 336 671.8949

ngburek@pwrplan.com

PowerPlan.com

<image002.png>



Message

From: Jon Wolfe [jwolfe@pwrplan.com]
 Sent: 4/9/2019 1:27:58 PM
 To: Skip Fowler [Skip.Fowler@powerplan.com]
 Subject: RE: Questions for Enbridge

See below: Let me know your thoughts.

Hi Kim

Based on a recent audit by Roper Technologies and after talking with our PowerPlan team regarding project status, I would like to escalate a concern regarding PowerPlan Intellectual Property and Trade Secrets and a third party, via Barnabas Consulting.

Per the agreement between PowerPlan and Enbridge (specifically, Section 14.2), a third party must first sign a confidentiality agreement with the owner of the Confidential Information prior to the other party making Confidential Information available to such third party. Please see below for the specific language:

14.2 Each party agrees that it will not use, disclose, publish, or otherwise divulge to any third party either during or after the termination of this Agreement or permit its officers or employees, subcontractors or consultants to so divulge any confidential information of the other party without prior written consent of such party, which consent may be withheld by either party in its sole discretion. Each party shall employ no such less stringent procedures than the strictest procedures used to protect its own confidential data including procedures set forth in those paragraphs. If disclosure to a third party, such as an auditor, is required, the third party is required to first sign a confidentiality agreement with the owner of the confidential information. Licensee may use the standard reports of the Software in filings or proceedings before any governmental regulatory or judicial body to which it is subject.



Over the last 20 months PowerPlan has been working on good faith with via Barnabas with regards to our Intellectual Property and Trade Secrets. On three occasions, since the beginning of the PowerPlan Plan Project at Enbridge, PowerPlan or Roper Technologies has presented via Barnabas Consulting a Non-Disclosure Agreement based on via Barnabas being a competitor of PowerPlan, which has not been executed by via Barnabas Consulting.

The most recent was in March of this year, after Roper Technologies Intellectual Property Chief Legal Counsel completed a review of via Barnabas Consulting and sent via Barnabas Consulting a revised Non-Disclosure Agreement and a Cease and Desist Order regarding certain Marketing and Business practices of via Barnabas.

Going forward, until via Barnabas Consulting signs a Non-Disclosure Agreement, the PowerPlan Team has been directed not to share any Intellectual Property and Trade Secrets directly with via Barnabas Consulting Resources. Additionally, Roper Technologies Intellectual Property Chief Legal Counsel, also recommends that Enbridge and it's sub-contractors do not share or allow access to PowerPlan Intellectual Property and Trade Secrets. By doing so, Enbridge will avoid creating any joint liability for Enbridge, for any potential mis-uses of PowerPlan Intellectual Property, by via Barnabas Consulting.

Once an NDA is executed, PowerPlan still has the right to deny access to certain Intellectual Property and Trade Secrets, that PowerPlan is not willing to share with a known competitor in order to maintain a competitive advantage. The PowerPlan Project Manager is responsible for notifying Enbridge of any instances of such un-willingness to share certain Intellectual Property with via Barnabas Consulting.

Intellectual Property is considered any software, source code, databases, scripts, , solution designs, project plans, contracts and other documents and deliverables that are generated by PowerPlan and it's resources.

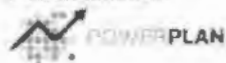
PowerPlan's software and all aspects of its Professional Services, relating to the software are Trade Secrets.

Could you please confirm your acknowledgement of these Enbridge requirements under the Agreement?

Please let me know if you have any questions or concerns.

Sincerely,

Jon Wolfe, CMA®, PMP®
Principal Project Manager
Office: +1 678.223.2724
Mobile: +1 864.915.0473
jon.wolfe@powerplan.com
PowerPlan.com



From: Skip Fowler
Sent: Tuesday, April 09, 2019 11:08 AM
To: Jon Wolfe <jwolfe@pwrplan.com>
Subject: Questions for Enbridge

John, please review the letter and specifically check on the highlighted yellow areas to where we should identify areas of concern around IP. Can you please complete and verify the contract paragraph as well?

Hi Kim

After talking with our PowerPlan team regarding project status, I would like to escalate a concern with PowerPlan Intellectual Property and a third party, Barnabus Consulting.

Per the agreement between PowerPlan and Enbridge (specifically, Section 14.2), a third party must first sign a confidentiality agreement with the owner of the Confidential Information prior to the other party making Confidential Information available to such third party. Please see below for the specific language:

14.2 Each party agrees that it will not use, disclose, publish, or otherwise divulge to any third party either during or after the termination of this agreement or permit its officers or employees to so divulge any confidential information of the other party without prior written consent of such party. Each party shall employ no such less stringent procedures than the strictest procedures used to protect its own confidential data including procedures set forth in these paragraphs. If disclosure to a third party, such as an auditor, is required, the third party is required to first sign a confidentiality agreement with the owner of the confidential information. Licensee may use the standard reports of the Software in filings or proceedings before any governmental regulatory or judicial body to which it is subject.

In good faith, we are considering release of the PowerPlan Test Scripts to National Grid. Please note that PowerPlan's delivery of the PowerPlan Test Scripts to you would remain subject to the following assumptions:

- PowerPlan's Software and Confidential Information are being made available in reliance of the representations National Grid has made to PowerPlan under the Agreement. Furthermore, PowerPlan's delivery of these test scripts to National Grid does not in any way waive, diminish or supersede National Grid's obligations to protect and limit disclosure of PowerPlan's Confidential Information, including but not limited to the obligations contained in Section 14.2 of the Agreement.
- National Grid acknowledges that per the Agreement, it is responsible and liable for any and all uses or misuses of the Software and PowerPlan Confidential Information (including the test scripts and other project deliverables) made available to National Grid, including any such use or misuse by any third parties.
- The rights and remedies available in Section 14.3 (injunctive release) and Section 14.5 (survival) also apply to these obligations.

Could you please confirm your acknowledgement of these Enbridge requirements under the Agreement?

Please let me know if you have any questions or concerns.

Hoyt Skip Fowler

Vice President Professional Services

Mobile: +1 770 557 5527

skip.fowler@powerplan.com
PowerPlan.com



Message

From: Jim Dahlby [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D216F1B123C546B280D24E68D8718750-JIM DAHLBY]
Sent: 2/18/2020 1:34:48 AM
To: Jim Duffy [jduffy@pwrplan.com]
Subject: RE: Important: SAP and Utegration update from Jason Stevens of Deloitte

Any post meeting feedback?

Jim Dahlby

Mobile: +1 678 289 7950
 jdahlby@pwrplan.com

From: Jim Duffy <jduffy@pwrplan.com>
Sent: Friday, February 7, 2020 2:34 PM
To: Matt Crye <mcrye@pwrplan.com>; Jim Dahlby <jdahlby@pwrplan.com>; Alex Elkin <aelkin@pwrplan.com>; Tod Bayne <Tod.Bayne@powerplan.com>; Jamie Carr <jcarr@pwrplan.com>; Jon Joury <jjoury@pwrplan.com>; Derrick Kempf <dkempf@pwrplan.com>
Cc: Marc Bortniker <marc.bortniker@powerplan.com>
Subject: Important: SAP and Utegration update from Jason Stevens of Deloitte

All,

I just got off the phone with Jason Stevens of Deloitte. As most of you know, he has been an incredibly valuable partner to us at UGI, and he would love to "copy and paste" our success to other utilities in North America.

I initially reached out to Jason to share some recent intelligence coming out of Aqua since that is one of his biggest target accounts (thanks Jamie for your consistent engagement and relationship building at Aqua). The purpose of this email isn't to get into Aqua per se, we'll continue to work that account regularly to insulate our position as they strategize how to merge with Peoples Gas.

The purpose of this email was to share some important information that Jason shared in return with me. Evidently next week SAP is getting their entire Utility industry practice (product, sales, pre-sales, consulting) together for a strategy meeting at the PGA facility in West Palm Beach.

Jason told me:

- Utegration sponsored the meeting and has a speaking slot, and they are **bringing the CFO of NRG** to the meeting to talk about their success. It's logical to assume that Utegration will beg the SAP sales team to bring them into other accounts.
- Jason doesn't know how SAP and SAP salespeople get paid if Utegration is successful. But there has to be some sort of agreement in place or else SAP's sales team won't care to advocate for Utegration. SAP gets paid when we sell our adapter, but it's not an earth-shattering amount of money and SAP's salespeople get no quota relief for it (to my knowledge).
- Jason has been told explicitly by a senior person at Utegration that their "PowerPlan replacement" solution flat out **DOES NOT WORK**. This person used to be one of SAP's most notable utility industry experts for over 20 years.
- Jason completely understands how non-regulated asset accounting (NRG) is much, MUCH less complicated than regulated utilities, so he's prepared to speak to that.
- Jason also sponsored the meeting and has a speaking slot. **He's bringing Thomas Lord with him, and Thomas is going to talk about all the success we had at UGI.** They're going to talk about how it was the smoothest PowerPlan-SAP project ever, and a big reason for that was the **ease of integration** thanks to the S/4 HANA adapter.
- Jason's speaking slot is immediately following Utegration's. So that's a good thing.



While it'll be great to have allies at the meeting, it's still very dangerous that Utegration will be speaking to SAP's entire utility practice. I'm sure Henry Bailey will speak in platitudes, brag about their success, and paint a product roadmap full of sunshine and rainbows. As a result, there could be some subsequent FUD in the marketplace that we'll have to battle.

If you have any questions or comments, or any advice/recommendations for prepping Jason in advance of this meeting, please let me know. Jason agreed to follow up with me after the meeting next Thursday to debrief, so I'll report back then.

Thanks,
Jim

Jim Duffy
Strategic Accounts Executive

Mobile: +1 202.340.4164
Jim.Duffy@PowerPlan.com
PowerPlan.com



Message

From: jdahlby@pwrplan.com [jdahlby@pwrplan.com]
Sent: 2/21/2020 8:55:11 AM
To: Kinav Patel [kpatel@pwrplan.com]
Subject: Fwd: FOLLOW-UP: Important: SAP and Utegration update from Jason Stevens of Deloitte

Jim Dahlby

(m) +1.678.269.7950

Sent from mobile device.

Begin forwarded message:

From: Alex Elkin <aelkin@pwrplan.com>
Date: February 20, 2020 at 6:32:36 PM EST
To: Jim Duffy <jduffy@pwrplan.com>, Marc Bortniker <marc.bortniker@powerplan.com>, Tod Bayne <Tod.Bayne@powerplan.com>, Matt Crye <mccrye@pwrplan.com>, Jim Dahlby <jdahlby@pwrplan.com>, Jamie Carr <jcarr@pwrplan.com>, Jon Joury <jjoury@pwrplan.com>, Derrick Kempf <dkempf@pwrplan.com>, Drea Toretti <dtoretti@pwrplan.com>, Suzanne Ward <suzanne.ward@powerplan.com>, Aaron Smith <asmith@pwrplan.com>
Subject: RE: FOLLOW-UP: Important: SAP and Utegration update from Jason Stevens of Deloitte



Duffy is correct. I agree that Utegration is the largest and most significant threat to our core utility customer base. We should expect competition at every S/4HANA transition for Fixed Assets and Lease (the NRG story) and even regulatory (they claim some similar capabilities but most customers use it for real-time ferc translation, not out core regulatory case). We also know they are involved in most SI projects, and particularly seemed to be getting closer to PWC once PWC was off-limits to PP with the Roper acquisition. We also know they are partnering with Vesta specifically to pursue lower tier customers. We communicated this message last year prior to your arrival, Marc.

The new news in the below is the session they sponsored and the level of activity they are engaging in to promote their recent NRG win and the work they have done. I certainly understand Duffy's points, and SAP reps may indeed be compensated for Utegration. That said, we had confirmation late last year that was not the case, but I understand that can change quickly. He correctly states that the SAP sales rep gets no credit for PowerPlan or the S/4HANA adapter sales. There are additional arguments for why SAP might favor Utegration over PowerPlan.

Foremost, Utegration is an SAP-only shop; we are not. A Utegration solution arguably makes SAP stickier and in an open competition against other ERPs in the cloud transition war period we are entering, might be viewed more favorably than a PowerPlan that might say - happy to work with any ERP. Utegration is built on the SAP platform, it might require buying additional SAP tools or HANA direct which would credit the rep. SAP has struggled to build a business case for S/4HANA transition. They may look at a Utegration service solution that may be capitalizable (and maybe even lower service number than our upgrade - I don't know, it could be more) as an opportunity to eliminate a large ongoing PowerPlan maintenance stream that is not capitalizable as a benefit to their business case. These reasons are all just reasonable speculation

Duffy is also correct that our relationship has eroded significantly with Henry Bailey's departure and other turnover and role changes at SAP. Henry was our primary supporter, and is now at Utegration which has adopted a competitive strategy. He led all aspects of utilities for SAP, and has relationships with customer executives, ecosystem partners, and across SAP at a level well beyond ours. That's an uphill battle. I am thankful that we were able to improve our relationship with Deloitte to the point they participated in the below as they did and shared this information; Duffy deserves a lot of credit for that as well.

I agree SIs will be very important, as is a stable and highly functional S/4HANA adapter. One additional idea we might want to consider would be to try to enter into some sort of mutually exclusive or preferred approach with Deloitte for Utilities running SAP. There would be pros and cons to that for sure, and it isn't a guarantee we could get there even if we wanted to, but there are a few data points out there that make me suggest it. Admittedly, this is likely not the right forum for debating them.

Thanks.

Alex Elkin

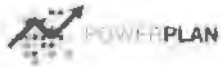
VP, Product Management - Accounting

Office: +1 770.618.2276

Mobile: +1 678.481.9358

alex.elkin@powerplan.com

Powerplan.com



From: Jim Duffy <jduffy@pwrplan.com>

Sent: Thursday, February 20, 2020 4:56 PM

To: Marc Bortnikier <marc.bortnikier@powerplan.com>; Tod Bayne <Tod.Bayne@powerplan.com>; Matt Crye <mccrye@pwrplan.com>; Jim Dahlby <jdahlby@pwrplan.com>; Alex Elkin <aelkin@pwrplan.com>; Jamie Carr <jcarr@pwrplan.com>; Jon Joury <jjoury@pwrplan.com>; Derrick Kempf <dkempf@pwrplan.com>; Drea Toretti <dtoretti@pwrplan.com>; Suzanne Ward <suzanne.ward@powerplan.com>

Subject: RE: FOLLOW-UP: Important: SAP and Utegration update from Jason Stevens of Deloitte

Marc- my answers below inline in red.

Jim Duffy

Strategic Accounts Executive

Mobile: +1 202.340.4164

Jim.Duffy@PowerPlan.com

PowerPlan.com



From: Marc Bortnikier <marc.bortnikier@powerplan.com>

Sent: Thursday, February 20, 2020 2:14 PM

To: Tod Bayne <Tod.Bayne@powerplan.com>; Jim Duffy <jduffy@pwrplan.com>; Matt Crye <mccrye@pwrplan.com>; Jim Dahlby <jdahlby@pwrplan.com>; Alex Elkin <aelkin@pwrplan.com>; Jamie Carr <jcarr@pwrplan.com>; Jon Joury <jjoury@pwrplan.com>; Derrick Kempf <dkempf@pwrplan.com>; Drea Toretti <dtoretti@pwrplan.com>; Suzanne Ward <suzanne.ward@powerplan.com>

Subject: RE: FOLLOW-UP: Important: SAP and Utegration update from Jason Stevens of Deloitte

Adding Drea and Suzanne so they have visibility to the feedback below.

To the team –

Is this a threat? Yes In what way?

Utegration will do/say whatever they can in order to **replace us** at regulated utilities that are implementing SAP S/4 HANA. If SAP is assisting them in this effort, it could give them added legitimacy and become a huge distraction... **we'll**

have to invest LOTS of time and energy into protecting our turf vs. selling. Fortunately, Utegration tried this before (with SAP ECC... the product was called "Asset Lifecycle Accounting," or ALA) and failed miserably, so some utilities will be a little skeptical. But many IT departments are so loyal to SAP that they'll give them the benefit of the doubt.

One additional note- in late 2018, Utegration hired Henry Bailey (<https://www.linkedin.com/in/henry-bailey/>) to be their EVP and Chief Strategy Officer. Previously, Henry was the Global VP of Utilities Business Solutions at SAP. So he'll give them added legitimacy, and he'll probably make it easier for them to weave their way into our customer base.

How would we define our relationship with SAP, and is there a play we should pursue to get a more aligned relationship?

Right now I think it's pretty non-existent. Alex had done a WONDERFUL job of building a relationship with SAP through Henry Bailey, but that has mostly disappeared now that Henry has joined Utegration. It's my understanding that the new SAP leadership has given us the cold shoulder. But I welcome Alex's and Tod's feedback on this.

Marc

From: Tod Bayne <Tod.Bayne@powerplan.com>

Sent: Thursday, February 20, 2020 9:12 AM

To: Jim Duffy <jduffy@pwrplan.com>; Matt Crye <mcrye@pwrplan.com>; Jim Dahlby <jdahlby@pwrplan.com>; Alex Elkin <aelkin@pwrplan.com>; Jamie Carr <jcarr@pwrplan.com>; Jon Joury <jjoury@pwrplan.com>; Derrick Kempf <dkempf@pwrplan.com>

Cc: Marc Bortniker <marc.bortniker@powerplan.com>

Subject: RE: FOLLOW-UP: Important: SAP and Utegration update from Jason Stevens of Deloitte

If Utegration is adding their solution to the SAP App Center, then the SAP sales rep would get quota credit. We looked into adding AIO to the SAP App Center, but settled on putting an enterprise solution up there was not the right approach. On the SAP Adapter front, I had a brief conversation with Joost and he did not believe there was enough value for what we would be giving up in payments to SAP. I will circle back with Jim to see if we want to revisit this with Joost based on what was shared below.

On the SI front – Would we and the other parties (UGI and Deloitte) be open to creating a case study?

Thanks -

Tod Bayne

Mobile: +1 239.410.9998

From: Jim Duffy <jduffy@pwrplan.com>

Sent: Wednesday, February 19, 2020 6:04 PM

To: Matt Crye <mcrye@pwrplan.com>; Jim Dahlby <jdahlby@pwrplan.com>; Alex Elkin <aelkin@pwrplan.com>; Tod Bayne <Tod.Bayne@powerplan.com>; Jamie Carr <jcarr@pwrplan.com>; Jon Joury <jjoury@pwrplan.com>; Derrick Kempf <dkempf@pwrplan.com>

Cc: Marc Bortniker <marc.bortniker@powerplan.com>

Subject: FOLLOW-UP: Important: SAP and Utegration update from Jason Stevens of Deloitte

Hi everyone,

I caught up with Jason Stevens and got his feedback on the SAP Utilities event last week that was mentioned in the email below.

He said that the meetings went as expected. Utegration bragged about NRG and claimed that they were ready for regulated utilities. Then immediately thereafter, Deloitte and Thomas Lord gave their presentation and bragged about SAP and PowerPlan.

The one interesting piece of feedback Jason shared was that after the UGI presentation, Michael O'Donnell (National VP of Utilities for SAP- <https://www.linkedin.com/in/michael-o-donnell-7854b24/>), stood up in front of the room and said, "Obviously you guys just heard two completely different stories. Thomas made the right decision two years ago by implementing SAP with PowerPlan, but I'm not sure the rationale for that decision would hold true today based on what we're hearing from Utegration."

So in summary, Michael was very political... he didn't criticize UGI's decisions, and he stopped short of endorsing Utegration. But clearly SAP is trying hard to leave the door open for Utegration, so there's no doubt we're going to have to fight hard against them over the next few years. I can only guess that the reason why they're trying so hard is that they probably have a deal worked out with Utegration to get a kickback on every sale of their product, with their sales reps getting quota credit. That's pure conjecture, but it would easily explain this behavior. Yes SAP gets paid when we sell our adapter, but it isn't much, and I don't think the SAP sales reps get any credit for it.

Partnerships with SIs will be **critical** as more and more of these huge SAP transformation projects hit the market.

Thanks,
Jim

Jim Duffy
Strategic Accounts Executive

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From: Jim Duffy
Sent: Friday, February 07, 2020 2:34 PM
To: Matt Crye <mcrye@pwrplan.com>; Jim Dahlby <jdahlby@pwrplan.com>; Alex Elkin <aelkin@pwrplan.com>; Tod Bayne <Tod.Bayne@powerplan.com>; Jamie Carr <jcarr@pwrplan.com>; Jon Joury <jjoury@pwrplan.com>; Derrick Kempf <dkempf@pwrplan.com>
Cc: Marc Bortnikier <marc.bortnikier@powerplan.com>
Subject: Important: SAP and Utegration update from Jason Stevens of Deloitte

All,

I just got off the phone with Jason Stevens of Deloitte. As most of you know, he has been an incredibly valuable partner to us at UGI, and he would love to "copy and paste" our success to other utilities in North America.

I initially reached out to Jason to share some recent intelligence coming out of Aqua since that is one of his biggest target accounts (thanks Jamie for your consistent engagement and relationship building at Aqua). The purpose of this email isn't to get into Aqua per se, we'll continue to work that account regularly to insulate our position as they strategize how to merge with Peoples Gas.

The purpose of this email was to share some important information that Jason shared in return with me. Evidently next week SAP is getting their entire Utility industry practice (product, sales, pre-sales, consulting) together for a strategy meeting at the PGA facility in West Palm Beach.

Jason told me:

- Utegration sponsored the meeting and has a speaking slot, and they are **bringing the CFO of NRG** to the meeting to talk about their success. It's logical to assume that Utegration will beg the SAP sales team to bring them into other accounts.
- Jason doesn't know how SAP and SAP salespeople get paid if Utegration is successful. But there has to be some sort of agreement in place or else SAP's sales team won't care to advocate for Utegration. SAP gets paid when we sell our adapter, but it's not an earth-shattering amount of money and SAP's salespeople get no quota relief for it (to my knowledge).
- Jason has been told explicitly by a senior person at Utegration that their "PowerPlan replacement" solution flat out **DOES NOT WORK**. This person used to be one of SAP's most notable utility industry experts for over 20 years.
- Jason completely understands how non-regulated asset accounting (NRG) is much, MUCH less complicated than regulated utilities, so he's prepared to speak to that.
- Jason also sponsored the meeting and has a speaking slot. **He's bringing Thomas Lord with him, and Thomas is going to talk about all the success we had at UGI.** They're going to talk about how it was the **smoothest PowerPlan-SAP project ever**, and a big reason for that was the **ease of integration** thanks to the S/4 HANA adapter.
- Jason's speaking slot is **immediately following Utegration's**. So that's a good thing.

While it'll be great to have allies at the meeting, it's still very dangerous that Utegration will be speaking to SAP's entire utility practice. I'm sure Henry Bailey will speak in platitudes, brag about their success, and paint a product roadmap full of sunshine and rainbows. As a result, there could be some subsequent FUD in the marketplace that we'll have to battle.

If you have any questions or comments, or any advice/recommendations for prepping Jason in advance of this meeting, please let me know. Jason agreed to follow up with me after the meeting next Thursday to debrief, so I'll report back then.

Thanks,
Jim

Jim Duffy
Strategic Accounts Executive

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Message

From: Brett Bertz [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=50C6D79EBEB74FFBB48F504EE2235E85-BRETT BERTZ]
Sent: 7/17/2020 3:14:17 PM
To: Kleczynski, Robert A:(BSC) [robert.kleczynski@exeloncorp.com]
Subject: Connecting about PowerPlan and Tax

Rob, I hope my note finds you and your family safe and healthy.

First, I wanted to let you know how much we appreciate the time you spent with the PowerPlan team in our recent EAB. I hope that you found the event valuable.

Second, I also wanted to see if you had a few minutes in the near term to talk about a topic that I don't think we've discussed before. Recently we've identified that there is a 3rd party working with some of our customers, delivering services on the PowerPlan software, that we have strong reason to believe is using access to our intellectual property to build competitive offerings. We've started a communication program with our customers and, given your role within the Tax community at EEI, I'd appreciate the opportunity to share with you what we're seeing and how we're responding to the situation. Your feedback would be very valuable in helping us make sure we continue to serve the needs of the EEI community and protect PowerPlan's intellectual property in tandem.

I have the following windows open:

- 7/23 after 4:30p ET
- 7/24 between 11a – 1p ET
- 7/27 after 4:00p ET

If there is a 30 minute slot that works for you, I'd be grateful for the time.

Thanks

Brett M. Bertz
 Chief Customer Officer

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Message

From: Brett Bertz [brett.bertz@powerplan.com]
Sent: 7/27/2021 9:42:00 PM
To: Jim Duffy [jduffy@pwrplan.com]; Marc Bortniker [marc.bortniker@powerplan.com]; Pat Petti [Pat.Petti@powerplan.com]
CC: Matt Crye [mcrye@pwrplan.com]
Subject: RE: IMPORTANT PLEASE READ: PowerPlan/UPPCO - Updated Technical Upgrade SOW & Order Form

Thanks for the feedback Jim.

Marc, I think we should bring this example and others we are seeing with the competitive landscape and the desire of our customers to have choices and flexibility to our Exec Team to make sure we all have a clear view of the current state and what's ahead.

From: Jim Duffy <jduffy@pwrplan.com>
Sent: Tuesday, July 27, 2021 6:18 PM
To: Marc Bortniker <marc.bortniker@powerplan.com>; Brett Bertz <brett.bertz@powerplan.com>; Pat Petti <Pat.Petti@powerplan.com>
Cc: Matt Crye <mcrye@pwrplan.com>
Subject: RE: IMPORTANT PLEASE READ: PowerPlan/UPPCO - Updated Technical Upgrade SOW & Order Form

They're unable to go on-prem now because they're paid up on Cloud through Jan 2022. So they don't want to eat the 6 months of Cloud fees, and they probably can't rally on such short notice to stand up all the necessary infrastructure to host on-prem anyway. In other words, we dodged a bullet. If they knew these issues a few months ago, they would've cancelled Cloud and used RCC for the upgrade, costing us the PS bookings and the Cloud ARR.

Clearly we need to work with the customer between now and the end of January to protect our Cloud. Cory is the CSM on the Account, I'll make sure Maria pulls in him and Kim.

Bigger picture, we should discuss the broader (industry-wide) implications of this situation. I remember a story Matt shared recently about TECO... **they purposefully did NOT buy our Cloud because they didn't want to give us exclusivity over Professional Services.** They love PowerPlan, but they believe strongly in having a healthy ecosystem for PowerPlan professional services.

If I was carrying an RCC business card, I would be screaming this UPPCO story as loud as I could and to as many utilities as I could- ***"Don't you dare buy PowerPlan Cloud because you will be stuck with their professional services going forward, and they'll charge you 30% more for less experienced resources and lower value services."***

I would also pick up the phone and call the heads of AGA/EEI, because they too are committed to making sure there is a healthy ecosystem of PowerPlan implementers. If somebody submits a question to the leadership group akin to ***"How have other utilities managed the situation with the limitation of professional services options with PowerPlan Cloud?"*** it could cause us BIG problems industry wide and kill our Cloud pipeline in the process.

Sorry if I'm taking sharp angles and being dramatic here, but I feel these are imminent risks (not "if" but "when"). Probably worth a conversation at the executive level.

Thanks,
Jim

Jim Duffy
 Vice President - Strategic Accounts

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From: Marc Bortniker <marc.bortniker@powerplan.com>

Sent: Tuesday, July 27, 2021 5:51 PM

To: Jim Duffy <jduffy@pwrplan.com>; Brett Bertz <brett.bertz@powerplan.com>; Pat Petti <Pat.Petti@powerplan.com>

Cc: Matt Crye <mcrye@pwrplan.com>

Subject: Re: IMPORTANT PLEASE READ: PowerPlan/UPPCO - Updated Technical Upgrade SOW & Order Form

Jim. I read this to say that they're unable to do that now (due to resources, licenses, skill sets, timelines) and they plan to move ahead with us as planned - and this is a future threat. Is that how you read it?

That said - even if that's correct this looks like a threat to this upgrade until we get a signed sow.

Thoughts on next steps or validation of current state?

I believe you have an exec relationship from the original discussion about IP protection when doing work in our cloud. Is there a move we should make there?

Get Outlook for iOS

From: Jim Duffy <jduffy@pwrplan.com>

Sent: Tuesday, July 27, 2021 5:24:05 PM

To: Brett Bertz <brett.bertz@powerplan.com>; Pat Petti <Pat.Petti@powerplan.com>

Cc: Marc Bortniker <marc.bortniker@powerplan.com>; Matt Crye <mcrye@pwrplan.com>

Subject: IMPORTANT PLEASE READ: PowerPlan/UPPCO - Updated Technical Upgrade SOW & Order Form

Brett and Pat,

As I've mentioned before, we're driving towards a successful outcome at UPPCO... an SOW for \$505k, with about \$25k in discounts getting us to that net number. However, Maria just unintentionally received some inside information about their conversations with RCC.

UPPCO is considering moving off of our Cloud and hosting PowerPlan themselves so that RCC can do future upgrades.

RCC was \$135k cheaper than us for the upgrade, and that combined with the higher value services they provide UPPCO (accounting and tax staff augmentation and advice) is so compelling that UPPCO is going to do a cost/benefit analysis once they get through their current resource crunch.

We have time to fix this at UPPCO and protect our Cloud ARR, but I think this is pretty alarming.

Thanks,

Jim

Jim Duffy

Vice President - Strategic Accounts

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From: Maria Vaccaro <maria.vaccaro@powerplan.com>
Sent: Tuesday, July 27, 2021 4:38 PM
To: Jim Duffy <jduffy@pwrplan.com>
Subject: FW: [EXT] RE: PowerPlan/UPPCO - Updated Technical Upgrade SOW & Order Form

Greg - UPPCO IT sent me a note this morning requesting that one statement from the SOW be removed. But notice Natasha's note to her team – see paragraph below. They are considering moving back on prem so that RCC can help them with future work.

"Attached is the revised SOW for the PowerPlan Technical Upgrade. RCC has mentioned that if we wanted to move "On-Prem" in January 2022, that project would need to start in August. Due to our Cloud agreement, I am not sure if this is a possible route for us at this time. PowerPlan's quote came in at [REDACTED] (which doesn't include the testing environments for a cost of [REDACTED]). RCC's quote for the PowerPlan Technical upgrade and other fixed asset scope items was [REDACTED] so we may want to pursue other avenues other than PowerPlan Cloud in the future when we have resources and can complete the cost effectiveness analysis (Oracle license needed, IT support, administrative knowledge, etc.)."

Maria Vaccaro
Strategic Account Executive

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From: Gregory Gagnon <gsgagnon@uppcoco.com>
Sent: Tuesday, July 27, 2021 1:36 PM
To: Maria Vaccaro <maria.vaccaro@powerplan.com>
Cc: Joseph J. Gerry <JJGerry@uppcoco.com>; Wendy Rautio <wrautio@uppcoco.com>; Gradon Haehnel <GHaehnel@uppcoco.com>; Natasha L. Wonch <NLWonch@uppcoco.com>
Subject: [EXT] RE: PowerPlan/UPPCO - Updated Technical Upgrade SOW & Order Form

Maria, I have one question/issue with the SOW:

Note one concern in the SOW on page 6 under "Project Assumptions" Section 3:

3. Client shall obtain all licenses or approvals necessary for PowerPlan or its subcontractors to perform the Services under this Statement of Work prior to making Client's facilities, software, hardware, networks or other similar resources available to PowerPlan. Client shall be responsible for the content of any database, system or server, and the control on its access, backup and recovery of the stored data (the "Security"). The Security will also include procedures necessary to safeguard the integrity of software and data from access by unauthorized personnel.

Does this paragraph even apply to use and we are upgrading a Cloud server controlled by PowerPlan and the have the licensing and the have full control of the database, systems, servers and backups, we did not. So I don't know why this is in our SOW? I do understand we are responsible for the content in the system.

Please advise. Thanks

Greg Gagnon
Director of Information Technology

Upper Peninsula Power Company
GSGagnon@upppo.com
Office: 906 232-1444

From: Natasha L. Wonch <NLWonch@upppo.com>
Sent: Wednesday, July 21, 2021 6:50 AM
To: Gradon Haehnel <GHachnel@upppo.com>; Gregory Gagnon <gsgagnon@upppo.com>
Cc: Joseph J. Gerry <JJGerry@upppo.com>; Wendy Rautio <wrautio@upppo.com>
Subject: FW: PowerPlan/UPPCO - Updated Technical Upgrade SOW & Order Form
Importance: High

Good Morning,

Attached is the revised SOW for the PowerPlan Technical Upgrade. RCC has mentioned that if we wanted to move "On-Prem" in January 2022, that project would need to start in August. Due to our Cloud agreement, I am not sure if this is a possible route for us at this time. PowerPlan's quote came in at [REDACTED] (which doesn't include the testing environments for a cost of [REDACTED] RCC's quote for the PowerPlan Technical upgrade and other fixed asset scope items was [REDACTED] so we may want to pursue other avenues other than PowerPlan Cloud in the future when we have resources and can complete the cost effectiveness analysis (Oracle license needed, IT support, administrative knowledge, etc.).

I am on vacation starting today until August 2nd, but could have a meeting anytime this week. I'll review this SOW sometime today and input my comments and share with the group.

Thank you,
Natasha

From: Maria Vaccaro <maria.vaccaro@powerplan.com>
Sent: Tuesday, July 20, 2021 5:18 PM
To: Natasha L. Wonch <NLWonch@upppo.com>
Subject: PowerPlan/UPPCO - Updated Technical Upgrade SOW & Order Form
Importance: High

WARNING: This email was sent from an external address. Exercise caution when opening links or attachments.

Natasha,

Attached you will find word and .pdf copies of the:

1. Technical Upgrade SOW - which also includes testing services, and
2. Order Form (OF) - For additional environments required for the upgrade work to be performed in

Please Note:

- Both the SOW & OF will need to be reviewed and signed
- PowerPlan has honored a 5% discount for this upgrade and you will find language for this under Consulting Fees - 4th point

Please let me know if you have any questions or if the team would like to discuss any of the items on a call.

Thank you

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PLAN

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PowerPlan - CONFIDENTIAL

June 11, 2020

VIA EMAIL

{{Recipient.Company}}

ATTN:

{{Recipient.FirstName}} {{Recipient.LastName}}

{{Recipient.Email}}

Dear {{Recipient.FirstName}}:

Thank you for being a valued customer and partner of PowerPlan. In the spirit of this partnership, I am writing to you to raise a concern that PowerPlan has about access to our software and associated intellectual property by a specific third-party: Lucasys Inc.

Lucasys offers consulting services associated with PowerPlan software and software solutions that compete with PowerPlan software. To protect our intellectual property, including trade secrets, we cannot permit our customers to provide Lucasys with access to our proprietary software and associated confidential information while Lucasys is simultaneously developing, marketing, and selling competitive software to those same customers. This would create an intolerable risk that Lucasys will misuse and misappropriate our confidential information and unfairly use it to develop, market, and sell its competing software.

We are proactively alerting our customers about this intellectual property protection concern to help avoid a potentially compromising situation. Our software license and subscription agreements require that customers obtain our consent prior to disclosing our confidential information to third parties. Please be advised that, pursuant to those provisions, PowerPlan will not consent to Lucasys having access to our software or associated confidential information.

PowerPlan consent is not required for our customers to retain Lucasys for projects that will not involve access to, disclosure of, or working with PowerPlan software, data models, or other confidential information. Additionally, PowerPlan consent is not required for customers to provide their data, in raw form, to Lucasys, provided it is being done in a way that does not involve third parties accessing PowerPlan's software or data models or schema, including the underlying database, to retrieve such data.

The remainder of this letter provides answers to certain questions that you may have relating to what your contract with PowerPlan says about confidential information, and the scope of PowerPlan's confidential and proprietary information.

What does my contract with PowerPlan say about confidential information?



To protect and preserve our intellectual property, including trade secrets, we take reasonable steps to maintain the confidentiality of our software and associated information. One of the ways we do this is by including confidentiality provisions in our software license and subscription agreements in which we and our customers agree to protect each other's confidential information. As part of those provisions, our customers acknowledge our proprietary rights in our software and supporting materials and agree not to disclose our confidential information to any third-party without our consent and to protect such information as they would their own confidential information.

What are examples of PowerPlan's confidential information and trade secrets?

PowerPlan's intellectual property includes the confidential and proprietary information and trade secrets embodied within our unique and sophisticated software solutions. This includes our source code, system and database architecture, database models and structures, and various unique and integrated features and functions thereof. Our confidential information also includes user guides and other documentation, professional services deliverables, information relating to our software design sessions and workshops, and our training classes and materials. These examples fall within the definition of confidential information in our license and subscription agreements. They also meet the statutory definition of a trade secret, because they are: (i) not generally known by or available to the public; (ii) provide competitive economic value to PowerPlan; and (iii) are the subject of reasonable efforts to maintain their secrecy.

What actions amount to disclosure of or providing access to PowerPlan's confidential information?

Among the information and access that our customers should not provide to Lucasys are the following: (i) front-end user access to PowerPlan's software; (ii) access to your PowerPlan database (whether by a link or credentialed login access provided by you), or to PowerPlan's data model; (iii) user guides and other PowerPlan software documentation; (iv) access to Social Power and other PowerPlan user community sites; (v) professional services deliverables and other project work product; and (vi) invitations or participation in design sessions, software testing, user training, and other project meetings or workshops relating to PowerPlan software.

Does this letter apply to other third-party access to PowerPlan's confidential information?

PowerPlan software license and subscription agreements require that customers obtain our consent prior to disclosing our confidential information to third parties. In the future, you will receive an additional communication from a vendor that PowerPlan has engaged to perform a generalized customer audit of third-party access to PowerPlan's software and associated confidential information. We would appreciate your cooperation in responding to that communication.

Final Points

If you are currently using Lucasys as a consultant to provide services that require access to PowerPlan software or confidential information, please contact PowerPlan by sending an email to Legal@pwrplan.com with the Subject: Protecting PowerPlan Proprietary Software and provide the relevant details. We will respond as soon as possible to discuss how to address the

situation without disrupting your operations or ongoing projects.

Once again, thank you for your investment with PowerPlan and for your partnership in protecting PowerPlan's confidential information.

Sincerely,
Brett Bertz
Chief Customer Officer

Cc: Jonathan Sucher, Senior Corporate Counsel
Copyright © {{Current_Year}}, PowerPlan, Inc. All rights reserved.
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